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OTHER MEETINGS AND ACTIVITIES

Report of the Secretary-General

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Introduction

1. In its resolution 45/155, the General Assembly laid down the following as the objectives of the World Conference on Human Rights in 1993:

(a) To review and assess the progress that had been made in the field of human rights since the adoption of the Universal Declaration of Human Rights and to identify obstacles to further progress and ways in which they could be overcome in this area;

(b) To examine the relation between development and the enjoyment by everyone of economic, social and cultural rights, as well as civil and political rights, recognizing the importance of creating the conditions whereby everyone might enjoy these rights as set out in the International Covenants on Human Rights;

(c) To examine ways and means to improve implementation of existing human rights standards and instruments;

(d) To evaluate the effectiveness of the methods and mechanisms used by the United Nations in the field of human rights;

(e) To formulate concrete recommendations for improving the effectiveness of United Nations activities and mechanisms in the field of human rights through programmes aimed at promoting, encouraging and monitoring respect for human rights and fundamental freedoms;

(f) To make recommendations for ensuring the necessary financial and other resources for the United Nations activities in the promotion and protection of human rights and fundamental freedoms.

2. In its resolution 46/116, the General Assembly requested the Secretary-General to report to the Preparatory Committee on progress made on meetings that have been organized under the auspices of the United Nations human rights programme pursuant to resolution 45/155. The report listing the meetings which have been organized by the Centre for Human Rights and those held by intergovernmental and non-governmental organizations to which the Centre for Human Rights has been invited may be found in document A/CONF.157/PC/43 (previously A/CONF.157/PC/22).

3. At its second session, the Preparatory Committee decided (PC.2/3) "to request the Secretary-General to prepare an analytical compilation of the recommendations, in extenso, of the meetings referred to [in A/CONF.157/PC/22] and of any other meetings which might be held under the auspices of the United Nations human rights programme pursuant to General Assembly resolution 46/155, and to submit an initial analytical compilation to the Preparatory Committee at its third session and a final updated compilation to the Committee at its fourth session".

4. Also at its second session, the Preparatory Committee decided (PC.2/6), pursuant to General Assembly resolution 46/116, to take note of the report of the Secretary-General on studies and documentation for the Conference (A/CONF.157/PC/20), which comprised annotations to the themes for the studies.

5. The present report, containing the initial analytical compilation, is organized according to the list of objectives of the World Conference as set out in paragraph 1 above and includes recommendations from the following meetings:

(a) World Congress on Human Rights (New Delhi, December 1990) (A/CONF.157/PC/6/Add.7);

(b) Nordic seminar on Human Rights (Laugarvatn, Iceland, 9-10 June 1991) (A/CONF.157/PC/7);

(c) International Workshop on National Institution for the Promotion and Protection of Human Rights (Paris, 7-9 October 1991) (E/CN.4/1992/43 and Add.1 and 2);

(d) Regional Seminar of Experts on Human Rights, Democracy and Economic and Social Development (Santiago, 10-13 December 1991);

(e) European Conference on International Human Rights Standards (Barcelona, Spain, 13-17 January 1992);

(f) Calgary Group Workshop on Global Strategies for Achieving Fairness in the Courts: Domestic Violence (Geneva, 5 February 1992);

(g) Technical Conference on Practical Experience in the Realization of Sustainable and Environmentally Sound Self-Development by Indigenous Peoples (Santiago, 18-22 May 1992) (E/CN.4/Sub.2/1992/31 and Add.1);

(h) Seminar on Academic Freedom (Lund, Sweden, 9-11 March 1992);

(i) International Conference on Academic Freedom and University Autonomy (Sinaia, Romania, 5-7 May 1992).

The following paragraphs are all taken verbatim from the reports indicated in parentheses.

ANALYTICAL COMPILATION OF THE RECOMMENDATIONS OF OTHER MEETINGS RELATED TO THE PREPARATORY PROCESS OF THE WORLD CONFERENCE

Objective 1: "To review and assess the progress that has been made in the field of human rights since the adoption of the Universal Declaration of Human Rights and to identify obstacles and ways in which they can be overcome to further progress in this area" (resolution 45/155, para. 1 (a))

6. The possible strengthening of economic, social and cultural rights by way of improved standards, moving away from progressivity to more firm commitments, and by allowing individual communications, could likewise be the subject of further examination, while keeping in mind that the prohibition of discrimination already applies across the board of these, as well as other, rights and freedoms (Iceland report, para. 19).

7. The relationship between human rights and peace could be added to the above-mentioned themes of democracy and development. A close linkage is made in the Charter of the United Nations, not least in Article 1 listing the purposes of the Organization, between the maintenance of international peace and security, respect for human rights, and international economic and social cooperation (Iceland report, para. 27).

8. Internal conflicts and violence are a major source of threats to and breaches of international peace and security. The conflicts are often born from ethnic, ideological or religious rivalries. They feed on oppression and poverty. Civil wars necessarily destabilize neighbouring countries, if only as a result of the resulting flow of refugees. Keeping in mind the sources and consequences of internal conflict and tension, international responses to such situations must be at the top of the human rights agenda. The international community cannot stand aloof from these conflicts (Iceland report, para. 29).

9. The world community has reached a stage in the ethical and psychological evolution of civilization when massive and deliberate violations of human rights will no longer be tolerated. A Government engaged in systematic and flagrant violations of fundamental human rights norms cannot legitimately invoke domestic jurisdiction. Humanitarian intervention might be the concept which unites law and morality in this context (Iceland report, para. 30).

10. Article 2, paragraph 7, of the Charter of the United Nations concerning matters essentially within the domestic jurisdiction of States gives way to the authority of the Organization to maintain international peace and security. Furthermore, the emergence and acceptance of the Charter and all the international human rights instruments give rise to obligations - and independent mandates of international concern to be dealt with by the international community - which must coexist with the sovereignty of States (Iceland report, para. 31).

11. A study of the possible international responses to internal conflicts should encompass humanitarian assistance by international organizations or other international action, for the protection of civilians and minorities, when peace and survival so demand. The non-military and non-violent, as well

as practical aspects, of humanitarian assistance should be elaborated upon. Impartial monitoring by international observers could be one important element of the international response (Iceland report, para. 32).

12. For purposes of prevention, every country should adopt national legislation with precise provisions on how to deal with breaches of human rights and humanitarian law during situations of internal conflict. The implementation of such legislation would be scrutinized by international organizations, which could also draw up model legislation to this effect (Iceland report, para. 34).

13. In conclusion the Covenant offered a better protection of the right to equal treatment than the European Convention. Article 26 of the Covenant was an autonomous right which was of general application. With regard to minorities, it was said that the Covenant was now the only instrument which held a clause on minorities. Furthermore, the Committee had adopted a final view on the case of a collective claim made by an indigenous population, which had been considered by the Committee to be a minority (Barcelona report, p. 20).

14. The rules and standards adopted by the United Nations with regard to torture and other cruel, inhuman, or degrading treatment or punishment were set forth in the Universal Declaration, the International Covenant on Civil and Political Rights and several declarations, and codes of conduct. The latter were especially applicable to those responsible for the application of the laws, such as the police, prison officials and physicians. Other activities in this field were those by the United Nations Voluntary Fund for Victims of Torture, which financially supported therapeutic and social reintegration programmes, and those by the Special Rapporteur on Torture.

15. None the less attention was drawn to the fact that torture was still systematically practised in some 60 countries. The most specific instrument in the fight against torture was the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. This instrument contained three main parts: the first containing a definition of torture and the obligations of States parties; the second instituted an international supervisory mechanism; and the third one, the usual final clauses. The definition of torture itself had three elements: the nature of the act (causing severe pain or suffering); the status of the perpetrator (being an agent of the State), and the goal of the act (to intentionally inflict pain to, inter alia, obtain information or a confession). The definition excluded pain or suffering as a result of lawful sanctions. The definition raised a number of questions concerning matters such as prolonged incommunicado detention, judicial amputations as provided for in Islamic Law, the execution of the death penalty, and some customary practices in certain regions of the world.

16. Turning to the obligations of States parties, torture has been absolutely prohibited in domestic legislation and other measures. More specific obligations included the punishment of the act of physical or mental torture as such; the extradition of accused torturers; measures of education and information; a systematic review of interrogation practices and conditions of detention; to ensure the right of individuals to submit complaints about

torture; to provide reparation and rehabilitation to torture victims; and to declare inadmissible as evidence in any proceeding whatsoever statements extracted under torture. These obligations apply mutatis mutandis to acts constituting cruel, inhuman or degrading treatment or punishment.

17. With regard to the supervisory mechanism provided for in the Covnention, States parties are obliged to regularly submit reports on their implementation of the Convention to a quasi-judicial body, the Committee against Torture, which was composed of 10 independent experts. Furthermore, the Committee could engage in a confidential inquiry when it received reliable information to the effect that torture was practised systematically in a State party. The Committee reported on its work, views and recommendations to the General Assembly. The Committee did not condemn, but rather established the facts and provided recommendations. Sanctions as such did not exist, but the work of the Committee could through international public opinion put pressure on Governments to eradicate torture. A review of the reports presented before the Committee had shown that respect for human rights coincided with democratization. However, in spite of the efforts of the countries concerned torture continued to exist.

18. Turning to inter-State and individual complaints mechanisms, the Committee may receive communications from one State party to the effect that another State party was not fulfilling its obligations under the Convention. However, the States parties should first try to settle the dispute amongst themselves. When the issue was submitted to the Committee, the Committee had to ascertain that domestic remedies had been exhausted. The Committee should make available its good offices with the aim of reaching a friendly solution. The Committee might also receive communications from an individual. After deciding on the admissibility of the case and entering into contact with the State concerned, the Committee shall consider the case and forward its views to the Government and the individual concerned. Both these procedures were optional, applicable only to States parties having accepted them. Currently, predominantly Western States have accepted these procedures.

19. Attention was drawn to the fact that torture could also be committed by organizations not belonging to the State. This should be covered by the national penal laws. The problem was raised of how to prove torture when no outward signs could be detected. The Committee worked together with the Special Rapporteur on Torture, although it should be kept in mind that different mandates applied. Attention focused on the draft additional protocol to the Convention, according to which the Committee could make visits at any time to detention centres, prisons, hospitals, etc. This protocol was modelled on European practice and was considered to be an excellent idea in the fight against torture. In this context it was remarked that detainees should have access to a lawyer within 24 hours and should be examined by a physician (Barcelona report, pp. 20-22).

20. The indivisibility of economic, social and cultural rights on one hand, and civil and political rights on the other hand, was stressed. However, it appears that the first category was considered somehow less important than the latter on the international and national level. It was underscored that interrelatedness and indivisibility also applied with regard to the rights elaborated in other United Nations instruments.

21. The International Covenant on Economic, Social and Cultural Rights could be divided into three parts: economic rights in articles 6 to 8; social rights in articles 9 to 12; and cultural rights in articles 13 to 15. The first category derived its name from its link with the economy and labour issues and included the right to work; and the right to just and favourable conditions of work. The second category, social rights, dealt with the social status of the individual and the protection of his economic and social interests. It included the right to form trade unions (which could also be found in article 22 of the International Covenant on Civil and Political Rights), the right of each to social security, the right of assistance to and protection of the family, the right to an adequate standard of living, and the right to physical and mental health. The third category (cultural rights) aimed at the promotion of the spiritual development and intellectual and cultural enrichment of man's personality. It included the right to education, including the right to primary education which was compulsory and free for all, the right to culture and protection of intellectual property.

22. The characteristics of the rights enshrined in the Covenant were threefold. First of all, these rights were by nature complex: each right provides for many possible methods of implementation. Secondly, the implementation of economic, social and cultural rights was determined by the level of economic development of States parties. In this respect, the external debt problem and the deterioration of the economic situation had created serious problems for the developing and central and eastern European countries in their efforts to implement the Covenant. Thirdly, the implementation of the Covenant should be undertaken progressively and with the aim of constantly improving the situation.

23. With regard to the supervisory mechanism, it was explained that the only mechanism provided for in the Covenant was the examination of States parties' reports. According to the Covenant, reports should be submitted in stages. This had a double meaning: the initial report should be followed by periodic reports and reports should cover separately articles 6-9, 10-12, and 13-15. The latter separation had been abandoned in 1988, in view of the interrelatedness of the rights in the Covenant. Instead, States parties were now required to submit a global report on the implementation of all rights: an initial report was due two years after entry in force, periodic reports every five years. Reports should be drawn up in accordance with guidelines elaborated by the Committee.

24. In the opinion of the Committee the reporting procedure had seven purposes: (1) to have each State party examine its legislation and practice and its conformity with the Covenant; (2) to supervise the regular review by States parties of its internal situation; (3) to establish a detailed framework on which to base future policies; (4) to facilitate public scrutiny of national policy; (5) to evaluate progress made in the implementation of the Covenant; (6) to help Governments understand better their problems in achieving compliance; and (7) to facilitate an exchange of information between the Committee and the State party. The expert remarked that the Committee was concerned with the great number of overdue reports.

25. The Committee had been established by ECOSOC resolution 1985/17 of 28 May 1985. It was composed of 18 members and held one session of three weeks each year. Experience in considering reports had shown that in general reports did not conform to the guidelines laid down by the Committee, especially with regard to information on practice. The oral presentation was usually satisfactory, in particular when the delegation included specialists in the fields concerned. After the discussion the Committee proceeded to the adoption of a final observation, reflecting the opinion of the Committee as a whole on the report and the situation in the country concerned. The atmosphere in the proceedings of the Committee could be described as one of constructive dialogue. This had certainly been the case after the end of the Cold War. The Committee also had adopted four general observations with regard to the provisions of the Covenant with the aim of allowing others to benefit from the experience of the Committee. Recently the Committee had undertaken the difficult problem of elaborating an optional protocol.

26. In conclusion, it was said that the implementation of the Covenant is a never-ending process and an enduring problem. Furthermore, the problems of implementation of the Covenant were of a universal nature. Social justice and the enjoyment of economic, social and cultural rights could contribute considerably to stable relations and the strengthening of peace, especially in Europe.

27. The discussion opened with a remark on possible relations between the quality of periodic reports submitted by Governments and the complexity of the reporting guidelines; the idea was put forward to engage in a dialogue during the preparation of the report. Another problem concerned the logistic difficulties involved in bringing together the persons knowledgeable in the necessary fields; for small countries it might be better to send a diplomat - generalist by definition - to represent the State party. It was suggested that the dialogue might partly be conducted in writing. In any event, the Centre for Human Rights should organize more training courses on reporting obligations. The members of the Committee themselves were ready and willing to provide such assistance. Attention was drawn to the important role of the ILO in the consideration of reports dealing with articles 6-9 of the Covenant.

28. With regard to the nature of economic, social and cultural rights, the opinion was expressed that indeed some of these rights were absolute rather than relative to the level of economic development, e.g. the right to form trade unions, the right to strike, and the right to protection of intellectual property. Referring to the right to a clean and healthy environment, it was said that there was no need to elaborate such a right but rather to see to it that basic freedoms (expression, participation in public affairs) were applied to the extent that citizens could contribute to such ends. In addition, it was suggested that the Covenant be amended to include the right to own property. Another suggestion was made to the effect that both Covenants should be united to render them more effective, although the rights enunciated in each were perhaps too different in nature. In dealing with the questions related to the draft optional protocol to the Covenant, it was stated that this instrument should not cover all rights, but only those that were justiciable (Barcelona report, pp. 23-25).

29. As regards the rights of migrant workers it was stated that human rights should be considered in their application to specific situations. Against this background, the relevant principles regarding migrant workers in CSCE documents were drawn up, as well as the Council of European system, and the relevant ILO conventions. The United Nations Convention on the Protection of the Rights of Migrant Workers and Members of Their Family was signficant in three aspects: the formulation of substantive rights, the promotion of equitable and lawful conditions for migrant workers and members of their family, and the supervision of the application of the Convention. All migrant workers, whether in a regular or an irregular situation were entitled to the enjoyment of basic human rights as indicated in part III of the Convention. Migrant workers and members of their family in a regular situation were entitled to a number of additional rights. They should enjoy those guarantees that permit them to realize to a maximum extent possible the principle of equality of treatment with nationals of the host country, subject to the limitations of their permission to stay and work. Other principles referred to family reunion and treatment of the members of the family, measures of positive discrimination, and participation in local institutions and political rights. The significance of special categories of migrant workers, which were generally not included in other international instruments, such as frontier workers, seasonal workers, itinerant workers, specific employment workers and self-employed workers was elaborated on. Turning to the promotion of sound, equitable and lawful conditions for migrations, it was submitted that, in principle, States had the right to establish the criteria for admission and stay of migrant workers.

30. The supervision of the application of the Convention could be of a judicial or quasi-judicial nature. The implementation of the Convention depended on domestic law and domestic remedies. Within the European system, there was a possibility of judicial control through the European Court for Human Rights. The United Nations Convention envisaged the establishment of a Committee, consisting of members elected by States parties and serving in their personal capacity with the participation of an ILO representative in a consultative capacity. The Committee would examine reports in order to elaborate its own considerations and recommendations to be included in an annual report to be submitted to the General Assembly and other bodies. There was also a possibility in the Convention of an inter-State as well as an individual complaints procedure.

31. In conclusion, it was important to establish an international legal framework for migrations at a universal level, both for States of origin and for receiving States to ensure orderly and lawful movements of workers to other States, which was essential to guarantee the stability of their reciprocal relations and the fundamental rights of migrant workers and their families (Barcelona report, pp. 26-27).

32. Human rights, both political and civil as well as economic, social and cultural rights, are interrelated and indivisible and cannot be made subject to different interpretations (Barcelona report, p. 43).

33. The conceptual distinction between generations of human rights might create a false image of a hierarchy in human rights and should therefore be abandoned (Barcelona report, p. 43).

34. The time is not yet ripe for an international legally binding instrument for the protection of minority rights. Persons belonging to national religious and linguistic minorities are already protected by international human rights instruments. However, the United Nations might draw upon the experience built up within the CSCE process in dealing with the issue at a political level (Barcelona report, p. 43).

35. Violence against women ... is a major obstacle to the achievement of peace and the other objectives of the United Nations ... This workshop is important because it will deal with the issue of gender fairness in the administration of justice. A key element in the protection of human rights is the existence of an impartial judiciary for the application of the law and the protection of individuals. To be effective, the judicial system must function equitably. In the past we have given close attention to discrimination in the administration of justice by reason of race. Now is the time to give such attention to discrimination against women.

36. The point was made that the solution to violence against women should lie through sex equality law, that law should put more power in the hands of women to confront the State and to confront men in society. It is only by empowering women through law that anything will ever be done about eradicating women abuse. It was argued that State sanctions directed against men have proven themselves to be ineffectual.

37. Systemic discrimination embodied in judicial decisions dealing with domestic violence in its multiple dimensions of poverty, race, culture, religion and philosophical ideologies was discussed. These workshops were led by women from different countries and regions of the world, including North America, Central America, Asia and Europe.

38. The discussions in the small workshops revealed that similar biases exist in a wide variety of jurisdictions other than those the speakers addressed. Participants from Ireland, England, Switzerland, South Africa, the Middle East and Namibia as well as Geneva-based NGOs with activities in many countries of the world spoke of a range of judge-made barriers to women victims of violence which prevent them from enjoying the equal protection and equal benefit of law and universally recognized human rights.

39. Specific analytical methodologies employed by legal decision-makers to decide cases involving the most serious domestic violence against women were examined. Gender-based criteria used to ameliorate or mitigate the harm of domestic violence and sentencing decisions were discussed. Marital rape, marital murders and patterns of sentencing were the specific topics.

40. The clear message was that murder and rape in marriage is a common global reality. Also common is the fact that States, their laws, legal systems and other instutions fail to protect the victims of this violence. Gender-defined roles of men and women deeply ingrained in the minds of judges, lawyers, legislators and other professionals interfere with the fair administration of justice. The persistent use of stereotypes and myths about wife battering tend to blame victims for the crimes committed against them.

41. Focus was placed on the responsibility, role and constrants on the judiciary to affect social change. The educative role of the judiciary, the importance of judicial education for emerging democracies and dilemmas for reform were the specific topics of the panelists.

42. It was noted that while the international human rights agenda has dealt with pressing issues such as the administration of justice and the independence and impartiality of justice, "nowhere do we see much specific consideration of violence against women or the related issue of judicial attitudes to that problem and in order to assess true objectivity or impartiality, the influence of the cultural, sociological, religious, psychological, economic or simply emotional make-up of judges and other decision makers must be examined because judges must be sensitive to the potential or actual influences of sexism and racism that may lie beneath the surface of their societies and of their social conditioning. The deepening need to deal with these questions, it was said, requires concerted action to put these issues on the world social, legal and institutional agendas. It was specifically pointed out that the 1993 World Conference on Human Rights was an important opportunity where that could be done.

43. It was explained how in one State the entire society including the legal systems, are riddled with sex-based discrimination. It was pointed out that the dual system of customary and common law doubly disadvantage women to the extent that in family law matters, women are placed "at the absolute mercy of men", and emphasized that in order for the judiciary to play a meaningful role in social transformation and lead social reconstruction during the transition to a non-racial, non-sexist, peaceful and democratic country, a judicial reform movement aimed at eliminating gender, racial and other forms of group-based bias in the administration of justice is crucial.

44. One participant highlighted the inadequacy of solely seeing the problem in terms of legal reform and pointed out that if oppression could be tackled by passing laws, the last decade in another State has been "the golden period for women". She described how comprehensive legislative reform dealing with violence against women is ineffectual as each year, the numbers of marital rapes and murders continue to increase. One of the reasons for this, she said, is the widespread acceptance of values and stereotypes that harm women. As an example, laws designed to deal with "dowry deaths" have failed to protect women because they are based on erroneous, stereotypical presumptions which camouflage the real issue which is the devaluation and powerlessness of these women caused by a system of sexism.

45. A resolution was drafted and forwarded to the United Nations. The participants in the workshop unanimously agreed to appeal to the forty-eighth session of the Commission on Human Rights to deal with the issue of violence against women and its treatment in judicial processes both as a human rights issue which requires continuing consideration by the Commission, and as an aspect of its agenda item 24, the World Conference on Human Rights (Calgary report).

46. The World Congress on Human Rights,

1. Calls upon all Covernments to ratify international instruments containing safeguards and remedies against torture, disappearances and extra-judicial executions, including the International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and should reflect in their domestic legislation and practice these safeguards and those provided in the United Nations principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions;

2. Recommends that the draft declaration on the protection of all persons from enforced or involuntary disappearance now before the United Nations Commission on Human Rights be examined and adopted as a matter of the highest priority;

3. Affirms that the scope of administrative detention should be strictly limited and it should never be used to imprison prisoners of conscience, or to avoid providing a fair trial as soon as practicable to other political prisoners;

4. Stresses that whenever administrative detention is applied it should be subject to strict judicial control by a fully independent judiciary;

5. Underlines the need to provide prisoners held in administrative detention will all the safeguards required by the United Nations principles for the protection of all persons under any form of detention or imprisonment, including the obligation to inform individuals on their rights at the time of their detention, the rights to be heard promptly after arrest, and to challenge the detention at any time before a judicial or other independent authority, and prompt access to their families and lawyers;

6. Believes that the concept of national security should be clearly, precisely and strictly defined. Different grounds for derogation, such as extreme social unrest, serious threats to political stability and acute economic emergency, should be clearly distinguished. (All grounds for derogation should be subject to the general criterion of a clear threat to the human rights of the population at large.);

7. Affirms that any state of emergency should be legally introduced and proclaimed, should be notified as required by international human rights treaties, and should be introduced only in response to an exceptional threat and only for such temporary period as that threat continues to exist. The exceptional powers provided under a state of emergency should be only those strictly proportional to the nature of the exceptional threat and should conform to the principle of non-discrimination;

8. Urges that the principles of international law applying to states of emergency should be developed through further consideration by the Human Rights Committee of its general comment on Article 4 of the International Covenant on Civil and Political Rights, and the Committee should develop a

mechanism for urgent consideration of each declared state of emergency, in order to ensure compliance with established criteria and procedures of international law governing derogations. Additional and alternative sources of information on states of emergency and their impact on human rights should be explored and a computerized information network should be established for that purpose. The role of NGOs should be enhanced in this sphere by adopting an additional protocol to the ICCPR with suitable safeguards;

9. Welcomes the total abolition of the death penalty this year by seven countries (Namibia, Czechoslovakia, Ireland, Andorra, Sao Tome and Principe, Mozambique) and its abolition for ordinary crimes in another (Nepal), and urges all Governments to abolish the death penalty in accordance with the right to life and respect for fundamental human rights, and to ratify the Second Optional Protocol to the ICCPR;

10. Further recommends that, pending abolition, all Governments should respect the safeguards prescribed by international law limiting the application of the death penalty, including the exclusion from liability to death sentences of juvenile offenders and mentally ill or retarded people, and the requirements of a fair trial with right to appeal to higher court and to seek clemency (New Delhi, Final Act, part I).

47. The World Congress on Human Rights,

1. Proclaims the inalienable right of humankind and its posterity to a safe, clean and healthy environment and acclaims and reiterates the indivisibility of human rights, peace and progress;

2. Considers that the illegal dumping of nuclear, toxic and hazardous materials, products, and wastes, the indiscriminate exploration and exploitation of resources, transfer of destructive technologies, testing of nuclear weapons on or under land and water or in space, nuclear explosions, oil exploration and detrimental exploitation of the common heritage of mankind such as the Antarctica and the operation of hazardous installations, cause or create the risk of death, serious bodily injury, cultural harm, and destruction and devastation of the environment and the life-support systems on which humankind depends for survival;

3. Considers it to be imperative to develop and elaborate international norms and standards, to provide for accessible and effective monitoring information-exchange, monitoring of compliance and investigation of violations, and for obtaining redress in all matters relating to a safe, clean and healthy environment;

4. Emphasizes the pressing need to strengthen and enlarge international advisory services, training programmes and collaborative consultations, free of cost or at a minimal cost, and the need for the widest dissemination of environmental information and for programmes and projects of environmental and energy literacy, education and research;

5. Recognizes that the problem of environmental destruction and growing ecological imbalance are directly caused by the prevalent dominant development ideology using technologies and processes of mass production, centralized distribution mechanism and promotion of consumerism;

6. Reiterates the fundamental right of humankind to freedom, equality, decent and adequate condition of life in an environment of quality that permits a life of dignity and well-being, and the equally fundamental responsibility of Governments, peoples, groups and individuals to protect and improve the environment for the present and future generations;

7. Declares the obligation of all States, governmental authorities, national and transnational corporations, groups and individuals, to strive for and assist in the preservation of the balance of nature and all living species in the ecosystem, the progressive realization of environmental protection, conservation of common resources and the prevention, regulation and prohibition of all hazards to ecology and life in the context of sustainable development;

8. Further declares that it is a crime against humanity, and calls upon States to expand the categories of international crime, to illegally dump nuclear, toxic and hazardous materials, products and wastes, to establish and operate hazardous installations without regard for the lives, safety and health, livelihood and cultural values of people, and to destroy, devastate and exhaust resources and life-support systems which are essential to the survival of humankind;

9. Calls upon all States to make comprehensive constitutional, statutory and administrative provisions and take appropriate steps to safeguard and secure a safe, clean healthy environment;

10. Further calls upon all States to accede to, ratify, implement and enforce by appropriate criminal and other penalties, all relevant international conventions, and to develop, conclude and bring into effect new international instruments that have the object of protecting the environment and the human rights to a healthy, clean and safe environment;

11. Further calls upon the United Nations system and all national and international aid and lending agencies to establish and enforce appropriate safeguards, incentives, and financial mechanisms, including "hold-backs" and trust funds, to ensure that recipients of aid adhere to the human rights proclaimed in international treaties, conventions, intergovernmental and non-governmental declarations and resolutions;

12. Recommends in particular

(a) The inclusion in national constitution or legislation a Charter of Rights, an Environmental Bill of Rights or a system of fundamental guarantees to a safe, sustainable, clean and healthy environment, including a reasonable right to know and access to information relating to all major projects, policies and processes, both now in operation and those that are being planned or proposed;

(b) Provisions for the assessment of and acceptance by individuals, communities and societies, the physical, economic and socio-cultural impacts and risks prior to the approval of major projects or development policies, for compensation, reporting, data-gathering, analysis, standard-setting, investigation, monitoring, enforcement adjudication and other related matters as well as provisions for rights of empowerment, people's participation, and opportunities for hearing in crucial decision-making, to the extent possible;

(c) The substitution of innovative and environment-friendly models, technologies and life-styles for existing developmental models, technologies and life-styles;

(d) Freely accessible technology transfer for environment-friendly products, processes and know-how;

(e) The prohibition of the illegitimate dumping of nuclear, toxic, hazardous and other similar products, chemicals, wastes and materials;

(f) The prohibition of nuclear weapons testing;

(g) The rational use of natural resources including land and water for integrated development;

(h) Scientific development leading to global self-sufficiency within the limits of available natural resources and removing poverty, disease, illiteracy and unemployment;

(i) The adoption of the principle of strict liability in respect of environmental lapses;

(j) Conservation of land and water resources by eliminating wasteful consumption, and by afforestation and tree plantation;

(k) A Charter of Rights for workers in hazardous industries which would include: (i) right to know the hazardous or toxic nature of substances and the dangers they pose when handling or when being exposed at the workplace; (ii) protection of those who alert authorities to unsafe working conditions; (iii) freedom of choice, freedom from economic coercion, right to refuse unsafe work; (iv) right to qualified and safe co-workers; and (v) right to accurate accident reporting and health reporting systems;

(l) A Charter of Rights for future generations which would (i) recognize the right of future generations to a safe, clean and healthy environment; (ii) impose a duty of stewardship on each generation to conserve and use the environment and natural resources for the benefit of the present and succeeding generations and to prevent irreversible and irreparable harm to life on our planet Earth; (iii) make each generation accountable to the next generation in its use of the natural environment; (iv) to secure environmental accountability through representation of future generations in decision-making by non-governmental organizations acting as trustees, sustainable development

of renewable resources and monitoring of the quality of environment, inter-generational trust funds financed by global users' fees or tools, such as fees on land disposal of hazardous waste, "severance tax" on motor vehicles and on products or services that contaminate the Earth's air, atmosphere, space, land and waterways; and

(m) International action to promote (i) the development of the concept of multinational enterprise, criminal and civil liability including liability of corporate directors and high officers; (ii) accountability of national and multinational enterprises directly as subjects of international law; (iii) a comprehensive system of regulation, including prohibition at national and international levels, governing all aspects of chemical and nuclear hazards, such as the export, import, manufacture, use, transport, storage and waste disposal; comprehensive on-going research especially on toxic effects and treatment of effluents and other pollutants, plant design, safety measures and operating procedures, workers' rights, plant siting, and pollution; (iv) the development of international information systems for environmental, economic, socio-cultural impacts and hazard assessment; (v) the improvement of international information systems regarding toxic effects of the chemicals by strengthening and extending the mandate of the International Register of Potentially Toxic Chemicals; (vi) creation of an International Disaster Relief system; (vii) development of a more effective international justice system for victims, for example special rules under international law on jurisdiction, forum, standing, discovery, representation, due process, interim orders, recognition and enforcement of foreign judgememts, and a new international dispute-processing system for victims including legal proceedings by individuals and groups concerned as well as by States; and (viii) the expansion of human rights in the International Covenant on Economic, Social and Cultural Rights to include specifically the right to a safe, clean and healthy environment using the complaints procedure of the Sub-Commission for Prevention of Discrimination and Protection of Minorities and the special application procedure to the Commission on Human Rights and Human Rights Committee (New Delhi, Final Act, part IV).

48. The United Nations Technical Conference on Indigenous Peoples and the Environment, meeting in Santiago, Chile, from 18 to 22 May 1992, recognizes that the sustainable and environmentally sound development of indigenous peoples, in accordance with their practices, is essential for their survival and well-being as peoples and for the sustainability of the ecological systems on which they depend. Ultimately, this will contribute to the healthy survival of the ecological systems of the world.

49. These goals cannot be achieved without the realization of the rights of indigenous peoples which include the restoration and provision of land and other resources as well as the rights to use and develop those resources as they determine. Recognition and implementation of the rights of indigenous peoples is also a means of redressing injustices, including the dispossession of lands and other resources, and of enabling indigenous peoples to live with greater self-sufficiency and dignity.

50. Traditionally, indigenous peoples lived in sustainable and harmonious relationships with their lands and environment. They possessed a deep knowledge, understanding and management experience of the ecological systems on which they depended. The ability of indigenous peoples to apply and develop this knowledge to their lands, and to share this knowledge with others, is vital for overcoming environmental degradation throughout the world. It is also an important factor in the achievement of equitable and sustainable living conditions for all the peoples of the world.

51. The following are the working principles that emerged from the Technical Conference. It is considered that they incorporate many of the concerns and practical experiences of indigenous peoples in the realization of sustainable and environmentally sound self-development that were expressed by those who attended the Conference. These working principles may not necessarily reflect the views of Governments. These principles are:

I

The importance of recognizing and providing for the enduring and permanent existence of indigenous peoples and their rights.

Recognition and respect for the integrity of the environment as a living system essential to the survival of all humankind.

Recognition, protection and respect for indigenous knowledge and practices that are essential contributions to the sustainable management of the environment.

The need for the restoration, provision and rehabilitation of resources (including lands and territories) to indigenous peoples and the right to use and develop those resources as they so determine.

The right of indigenous peoples to determine their own development and control their own institutions.

The equality of participation between indigenous peoples and Governments in negotiations on matters affecting indigenous rights.

The maintenance and development of indigenous languages and cultures.

The above working principles should be recognized within a mutually acceptable legal framework.

52. In accordance with these working principles, the Technical Conference proposes the following recommendations:

II

That projects of national development which affect indigenous peoples be preceded by studies of their socio-economic and environmental impact, with the direct and effective participation of indigenous peoples, Governments and the agencies promoting development.

That the United Nations system, with the consent of indigenous people, take measures for the effective protection of property rights (including the intellectual property rights) of indigenous peoples. These include inter alia, cultural property, genetic resources, biotechnology and biodiversity.

That the meetings of agencies within the United Nations system on indigenous peoples always include indigenous representation, provide adequate notice and, when possible, be held on indigenous territories.

That the World Bank and other multilateral financial institutions consult with indigenous peoples and develop adequate procedures for the participation of indigenous peoples in the planning, implementation and evaluation of processes of self-development.

That the United Nations system, other international bodies and bilateral programmes, with the consent of indigenous peoples, promote research by indigenous experts into indigenous knowledge, practices and technology and disseminate information about the collective nature and close spiritual and material relationship with the land of indigenous peoples and that funds be provided for that purpose.

That the environmentally sound management of resources and ecosystems of indigenous peoples be encouraged through the provision of the necessary funds so that an adequate standard of living can be guaranteed.

That, where appropriate, Governments provide adequate funding to enable indigenous peoples to participate effectively in negotiations for the restoration, rehabilitation and demarcation of lands, territories and other resources.

That mechanisms and resources be developed at the national and international levels to ensure the peaceful resolution of conflicts which may occur between indigenous peoples, States and other sectors of society.

That appropriate mechanisms and resources be developed to provide legal and technical assistance to indigenous peoples for the promotion of their rights and sustainable management of the environment.

That biosphere reserves and natural parks in indigenous territories be established only with the consent of indigenous peoples and with their active participation, control and management.

That intergovernmental and national development organizations with the active participation of indigenous peoples take account and recognize the knowledge, practices and technologies of indigenous peoples when rehabilitating the environment.

That the United Nations, international organizations providing financial and technical assistance and States, including their bilateral programmes of cooperation, recruit indigenous people as expert advisers on matters affecting them, particularly in relation to project and programme planning on the environment.

That the Centre for Human Rights, in collaboration with indigenous peoples' organizations and other interested parties, prepare and disseminate a manual on indigenous peoples' knowledge and experiences in development and conservation of the environment.

That intergovernmental, governmental and non-governmental organizations support the exchange among indigenous peoples of technical and cultural experience and knowledge of indigenous peoples on environment and sustainable development.

That there is coordination of national legislation dealing with the legal definition of indigenous peoples, their land, customary laws, resources and access to resources and the sustainable management and development thereof.

That support be given to the Fund for the Development of Indigenous Peoples in Latin America and the Caribbean, and that consideration be given to the creation of similar funds in Africa, Asia, the Pacific and other regions.

That States, which have not yet done so, ratify ILO Convention No. 169.

That the International Year for the World's Indigenous People (1993) be considered an opportunity to define and consolidate indigenous peoples' rights and that States and the United Nations system provide funds for development activities.

That appropriate mechanisms be developed at the international and national levels to identify, prevent and provide sanctions against environmental degradation.

That the contribution and effective participation of indigenous women be taken into account in all issues and activities related to development and the environment which affect indigenous peoples.

That the United Nations consider holding further expert meetings on matters of concern to indigenous peoples, in particular, on questions concerning the environment, land, resources and culture.

That the Secretary-General give the widest possible distribution to the report, recommendations and background papers of the Technical Conference, including distribution of the report and recommendations to the United Nations Conference on Environment and Development, to the General Assembly at its forty-seventh session, the Commission on Human Rights at its forty-ninth session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its forty-fourth session, and the Working Group on Indigenous Populations at its tenth session, and to Governments, competent international, intergovernmental and non-governmental as well as regional organizations and other international forums (Santiago report, para. 64).

Objective 2: "To examine the relation between development and the enjoyment by everyone of economic, social and cultural rights as well as civil and political rights, recognizing the importance of creating the conditions whereby everyone may enjoy these rights as set out in the International Covenants on Human Rights" (resolution 45/155, para. 2 (b))

53. Human rights, democracy and development should be among the main themes of the World Conference. Attention was drawn to paragraph 2 of the annex to Commission on Human Rights resolution 1991/30 which calls on the Preparatory Committee to keep in mind the interrelationship between exactly these themes. Building bridges between participatory development, development assistance and democracy will be an important task for the Conference (Iceland report, para. 14).

54. The separation between civil and political rights and economic, social and cultural rights should be overcome in order to establish their indivisibility. The so-called four freedoms, of speech and belief and from fear and want, as reiterated in the second preambular paragraph of the Universal Declaration, confirm the inevitable relationship. A study of rights which bridge the span between instruments and different categories of rights, such as trade union rights and property rights, would be a useful undertaking (Iceland report para. 18).

55. Democracy is a human right in itself, already by virtue of article 21 of the Universal Declaration. Many other established freedoms are necessary in a democratic society, including those of speech, assembly and association. Secret ballots in free elections, the rule of law, an independent judiciary, and judicial review of legislative and administrative actions are essential components of democracy (Iceland report, para. 20).

56. The World Conference should promote the human rights dimension of development activities. The integration of universal human rights standards and of respect for these standards into development projects and into national and international policies and programmes relating to development constitutes a natural interpretation of existing norms (Iceland report, para. 21).

57. In this regard, the World Conference may want to confirm, first, the logical coverage by existing human rights instruments of this part of national life and international efforts; second, the ongoing practice of integration at international and bilateral levels; and, third, the consequent gains for both national development goals and the peoples concerned. References, leading to the same conclusion, can also be made to the 1986 Declaration on the Right to Development and to the report of the 1990 Global Consultation on the Right to Development as a Human Right (Iceland report, para. 22).

58. The gains for development would include popular and political participation which would inevitably strengthen development as defined in the second preambular paragraph of the Declaration on the Right to Development. Participation and pluralism are the very basis for economic development. The policies and programmes of non-governmental organizations, as part of popular

participation, should be enhanced. The freedoms of speech, assembly and association should be highlighted in the development debate. By way of simple truths, it was said that a content populace will be more peaceful and more productive (Iceland report, para. 23).

59. Ongoing policies and programmes by such United Nations organs and agencies as UNDP, UNICEF, ILO, UNESCO and the World Bank, all of which take account of human rights considerations in their work, albeit to varying degrees, should be encouraged. The ILO approach of scrutinizing assistance projects in the light of existing labour standards is a model for other organizations and for Governments and should be expanded so that all applicable human rights instruments be used for this purpose. The World Conference could for example, propose to UNDP that it adopt the same approach with regard to human rights and labour standards, either by its own doing or by reference to the Centre for Human Rights and the International Labour Office (Iceland report, para. 24).

60. Human rights in development should be approached as a cross-sectoral objective, meaning the examination of each project with regard to general and specific questions. Generally, relevant employment issues could include trade union rights, non-discrimination in terms of recruitment and remuneration, absence of child and forced labour, guarantees of health and safety standards, and so on. Specifically, depending on the characteristics of a project, issues concerning ethnic groups, resettlement and compensation could be brought up. Ideally, this approach requires human rights impact assessments at the designing stage of projects, follow-up during execution, and evaluation at the end (Iceland report, para. 25).

61. Obstacles encountered in the process of integrating human rights into the development process should form part of the conceptual and practical debate. there should be a serious study of the obstacles and they should not be seen in a negative light as something jeopardizing the progress of human rights; instead they should be tackled in a constructive, forward-looking manner. The obstacles in question can include the debt crisis, structural adjustment policies, and the burden on small States resulting from ratification of instruments because of accompanying national action and reporting obligations. At the same time, it should be underlined that the obstacles should not be used as excuses by Governments, at home or abroad, for not complying with basic rights and freedoms (Iceland report, para. 26).

62. Past, ongoing and upcoming exercises involving United Nations peace-keeping operations and supervision of elections and referenda in several countries, often in connection with the peaceful negotiation of internal conflict situations, were deemed exemplary undertakings with significant human rights implications and therefore well-suited for additional study prior to the World Conference (Iceland report, para. 28).

63. The Four Freedoms of speech and belief and from fear and want, or Equality, Dignity and Justice, or Freedom in Dignity, or the Universal Culture of Human Rights were mentioned as valid descriptions of work or slogans for the World Conference (Iceland report, para. 93).

64. The wish was expressed that similar brainstorming and discussion events be convened by academic, non-governmental and governmental institutions in other parts of the world, as an essential part of the preparatory process, and that reports from these events be channelled to the Preparatory Committee of the World Conference (Iceland report, para. 94).

65. Participants in the Brainstorming Session expressed their thanks to the Centre for Human Rights and its leadership for having taken an active part in the deliberations. There was unanimous feeling that the time was right for the World Conference and that it offered splended opportunities for an overall examination of the United Nations human rights programme with a view towards strengthening human rights, democracy, development and peace (Iceland report, para. 95).

66. The World Congress on Human Rights,

1. Considers economic, social and cultural rights and the right to development as core rights and their realization as necessary for the protection of human dignity;

2. Urges that criteria for development strategies be laid down under the four broad categories: conditions of life, conditions of work, equality of access to resources, and participation, and that it is necessary to formulate indicators for the assessment of progress in the realization of human rights, especially in economic, social and cultural areas;

3. Expresses profound concern on many instances of violations of human rights by Transnational Corporations (TNCs) in home and host countries, such as marketing of banned drugs, exploitation of labour, massive loss of life and health due to production of hazardous substances;

4. Demands the accountability of Transnational Corporations and the enforcement of their obligations and responsibilities should be ensured by international organizations and Governments through formulation and implementation of appropriate code of conduct;

5. Recommends that necessary steps be taken at all levels to set right the existing maladies in the area of development and realization of the right to development as a human right. These include:

(a) a new definition of development which should consider such questions as: development for whom, by whom, at what cost to the individual and the environment; and a global effort to formulate this definition of development so geared to the objectives of the Universal Declaration of Human Rights and other international declarations, covenants, charters and treaties as a priority task;

(b) formulation of new strategies, goals and activities;

(c) promotion of active participation of people at the grass-roots level, and ensuring that the people are actively involved at all stages of initiation, goal setting, resources allocation on priority basis, implementation of programmes after their formulation, and the control assessment, monitoring and evaluation of development activities;

(d) elimination of undue influence and pressure by lending agencies and efforts to reduce, if not eliminate, the quantum and conditionalities of foreign aid extended to developing countries;

(e) use of guidelines and criteria in the initiation, planning, budgeting and programme implementation of agricultural, industrial, scientific and other development so as to ensure that a single step taken for development will, apart from not reducing respect for an observance of human rights, guarantee that the people are enabled to achieve increasing freedom to exercise the fundamental human rights enunciated and elaborated in international instruments;

(f) that a code of conduct be formulated for the compliance by all developmental agencies - national and international - in order to achieve enjoyment of powers of decision-making and distribution of the benefits of development on the bases of equality and justice among all peoples of the world;

(g) that international machinery to evaluate and monitor the process of development, concomitant with the realization of human rights be strengthened, through wide acceptance of and compliance with all international declarations, covenants and treaties adopted and to be adopted in future;

(h) that a greater role be given to non-governmental organizations to disseminate information and create awareness among the people and encourage increased involvement of people in all developmental activities, as outlined above; and

(i) that democratically established criteria be laid down by assessing the fruits of development and to measure them in terms of the realization of human rights and to devise a mechanism by which lending agencies and the recipient Governments will enter into only such financial arrangements that bring about the effective enjoyment of human rights by all. The same principle should apply for technical assistance and cooperation;

6. Notes the declining living standards and increasing deprivation of the basic needs and human rights of the people of the world as a result of the failure of the ongoing development strategies and faulty implementation of programmes;

7. Takes cognizance of the impending crisis of confidence of the people in the international activities, economy, powers, structures, programmes and mechanisms and the manifested inability of the international community to ensure full realization of human rights by all;

8. Calls upon international agencies, national Governments and international organizations to take urgent action to:

(a) formulate in practice and concept new development objectives, strategies and policies to remedy past abuses and to gear all development activities for the promotion and protection of human rights of all;

(b) draw up new and effective conventions, codes of conduct and other necessary instruments for strengthening the right to development and the protection of human dignity through effective realization by all of the economic, social and cultural rights and to devise machinery for wider and effective enforcement of such instruments and secure compliance by all concerned; and

(c) urge on the peoples and non-governmental organizations all over the world to education and encourage wide participation in all development programmes;

9. Requests the next World Congress on Human Rights to follow up implementation of these recommendations (New Delhi, Final Act, part III).

Objective 3: "To examine ways and means to improve the implementation of existing human rights standards and instruments" (resolution 45/155, para. 2 (c))

67. The efforts to promote ratification of and accession to international human rights treaties should be enhanced. It was noted that many human rights conventions which have been adopted by the General Assembly or other international conferences, most of the time by consensus or by a large majority of votes, fall far short of universal acceptance as legally binding texts. Dozens of States have not even adhered to instruments such as the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenants on Human Rights, which otherwise enjoy the highest numbers of ratification and accession acts. The rapid adherence of States to the International Convention on the Rights of the Child was seen, however, as particularly encouraging (Iceland report, para. 8).

68. The push towards increased adherence should include acceptance of the complaints procedures, such as the Optional Protocol to the International Covenant on Civil and Political Rights, article 22 of the Convention Against Torture, and article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination. These and other optional procedures have fallen behind in acceptance rates compared with ratification and accession of the substantive texts themselves (Iceland report, para. 9).

69. These efforts should include a search for method of persuasion vis-à-vis States which are behind in the ratification of and accession to human rights treaties. These methods could include giving more regular publicity to the list of non-ratifying States and regular requests by the General Assembly, the Economic and Social Council and/or the Commission on Human Rights so that the States in question could offer explanations for their reluctant partnership (Iceland report, para. 10).

70. In connection with adherence, it was underlined that the very objective and purpose of human rights conventions should not be undermined by reservations or unilateral interpretations. Practices of this kind should by all means be countered under the relevant rules of international treaty law and challenged in respective judicial organs and/or implementation bodies. Similar considerations apply to excessive and prolonged derogations resorted to during public emergencies (Iceland report, para. 12).

71. The World Conference should recognize that the Universal Declaration of Human Rights or at least substantial parts thereof constitute international customary law. The arguments behind the claim are persuasive and plentiful, including repeated quotations and references in international instruments and resolutions, in national constitutions and legislative acts, in international and national judicial decisions, and in the scholarly literature (Iceland report, para. 17).

72. In line with the mandating resolutions of the General Assembly and the Commission on Human Rights, the World Conference should focus on the improvement and strengthening of the implementation machinery and procedures of the United Nations human rights programme and come up with a plan of action to this effect (Iceland report, para. 46).

73. It was felt that the term "implementation" was too neutral and that another more suitable word or more specific expressions should be introduced in order to reflect more accurately the mood and needs of the international community. Among the terms indicative of this trend used during the discussions were enforcement, follow-up, compliance, supervision, inspection and investigation (Iceland report, para. 47).

74. Hard-core human rights problems which continue notwithstanding clear and universally accepted standards must receive priority attention and influence the outcome of the World Conference. These problems include torture, serious maltreatment of offenders and suspects, disappearances, arbitrary detention, and racial and ethnic discrimination. While the role of the Conference is not to address country situations, it is nevertheless inevitable that the forum seek solutions to patterns of these and other particularly serious and ongoing violations (Iceland report, para. 48).

75. The opinion was unanimously expressed that discrimination against women belongs to this category of the most serious, unresolved problems in the human rights field and that this issue should be placed on the agenda of the World Conference (Iceland report, para. 49).

76. Considering the multiple commitments to standards undertaken by States in accordance with the hundreds of human rights instruments and thousands of ratification and accession acts, the introduction of new means and methods of accountability constitutes a logical next step. It is necessary for realizing the rights and freedoms and for maintaining and strengthening public faith in the human rights programme (Iceland report, para. 50).

77. The role of national institutions in the promotion and protection of human rights and, preferably, the incorporation of human rights standards into national legislation are essential elements in successful implementation, which must begin at home. The possibility of national courts, ombudsmen or other national institutions seeking non-binding opinions or even preliminary rulings from international or regional human rights organs concerning the interpretation of the applicable standards also merits further study prior to the World Conference (Iceland report, para. 51).

78. In addition to the facilitation of dialogue and the building of confidence, the implementation of existing minority and indigenous peoples rights should continue. Eixsting rights in this regard include provisions in the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the UNESCO Convention against Discrimination in Education, and the ILO Convention on Indigenous and Tribal Peoples in Independent Countries (No. 169, 1989) (Iceland report, para. 52).

79. As to the ongoing preparation of two United Nations declarations on the rights of persons belonging to minorities and of indigenous peoples, the World Conference should stress that these texts and other new drafting exercises should be accompanied by effective implementation procedures in line with the guidelines adoped by the General Assembly in resolution 40/120 of 4 December 1986 (Iceland report, para. 53).

80. Fact-finding visits to countries by both treaty- and resolution-based organs should be encouraged and the consent of Governments actively sought to this end. Such visits would inevitably serve the useful purposes of both disseminating and obtaining information (Iceland report, para. 54).

81. The International Court of Justice could assume an increased role, both in terms of States bringing cases under existing jurisdictional or treaty provisions and of the General Assembly or the Economic and Social Council requesting advisory opinions (Iceland report, para. 55).

82. At the end of their work on 9 October 1991, the participants in the International Workshop drafted and adopted the following recommendations:

The participants in the International Workshop,

Having recognized the fundamental importance of the role of the national institutions in protecting fundamental freedoms, promoting democracy, strengthening dialogue between the Government and civilian society, and the emergence of a universal culture of human rights based on the effective application by the Member States of the principles set forth in the Charter of the United Nations and the international human rights instruments,

Considering that a national institution must be a body, an authority or an organization performing general and specific functions in the protection and promotion of human rights,

Conscious of the fact that, although it is the responsibility of each country to choose the form of institution for the protection and promotion of human rights which best meets its needs at the national level, it is important that, out of a concern for universality, it should take into account the experience acquired by other countries in order to achieve the highest international standard,

Noting that these institutions most often adopt either a collegial structure (national commissions on human rights) or a personalized structure (ombudsmen or mediators), and that apart from their advisory power in the area of human rights policies, some of them have quasi-jurisdictional powers in respect of violations of personal freedoms,

Having devoted their deliberations mainly to the experiences of the national commissions,

Wish to emphasize the specific importance and effectiveness of ombudsmen and mediators for the protection of human rights and fundamental freedoms;

Recommend that the results of their proceedings should be made use of in the finalization of a manual on national institutions by the United Nations Centre for Human Rights, in accordance with Commission on Human Rights resolution 1991/27, paragraph 10;

Recommend that the Commission on Human Rights should transmit the following principles to the Preparatory Committee for the World Conference on Human Rights in 1993;

Consider that, in order to develop the national human rights institutions and to encourage their establishment, Governments should take into account the following principles in their national legislation:

PRINCIPLES RELATING TO THE STATUS OF COMMISSIONS AND THEIR ADVISORY ROLE

Competence and responsibilities

1. A national institution shall be vested with competence to protect and promote human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, inter alia, having the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the

protection and promotion of human rights. The national institution may decide to publicize them. These opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

(i) Any legislative or administrative provisions, as well as provisions relating to judicial organization, intended to preserve and extend the protection of human rights. In that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights. It shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

(b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other agency in the United Nations system, the regional institutions and the national institutions of other countries which are competent in the areas of the protection and promotion of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

- Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

- Trends in philosophical or religious thought;

- Universities and qualified experts;

- Parliament;

- Government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity);

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence;

3. In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

1. Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

2. Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

3. Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

4. Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;

5. Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

6. Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the protection and promotion of human rights (in particular, ombudsmen, mediators and similar institutions);

7. In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to protecting and promoting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

ADDITIONAL PRINCIPLES CONCERNING THE STATUS OF COMMISSIONS WITH QUASI-JURISDICTIONAL COMPETENCE

A national institution may be authorized to hear and consider complaints and petitions concernig individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

1. Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

2. Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

3. Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

4. Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations on administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

In order to ensure that action is taken on the results of the Workshop, the participants recommend to the Commission on Human Rights that it should organize another seminar, which could be held after the 1993 World Conference.

SPECIFIC RECOMMENDATION

The participants in the International Workshop recommend that the United Nations Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights should be increased in order that adequate assistance may be provided to the national institutions (Paris Workshop, para. 254).

83. It was stated that the implementation of international legal norms had been fundamentally changed as a consequence of the phenomenon of international organization. In the legal field, States were now bound to give account of the exercise of their powers and its conformity with international standards before international bodies. On the other hand, the competencies of international organizations were limited by their constituent treaties, including implicit powers as generally accepted by the Member States concerned. Of course, sovereignty of States still remained a constitutional principle in the international order. The scope of institutional procedures is confined to the framework of constituent treaties as agreed upon by Member States. However, when it came to the implementation of international standards, international organizations had a will independent and separate of that of Member States. While States might be inclined to interpret the competence of international organizations in a strict manner, these organizations were able to let goals and objectives prevail over the letter of their constituent treaties as a consequence of their implied powers. Furthermore, international organizations had facilitated the setting of human rights standards and the establishment of mechanisms to oversee compliance.

84. Two questions remained however: first what was the role of States in the implementation of standards; and what were the powers of States when confronted with a violation of human rights. Turning to the first of these questions - with regard to the implementation of international standards in the domestic legal order - international mechanisms had but a subsidiary character. It was proposed that human rights norms, whether conventional or customary, should have direct applicability in the domestic legal order. Dualistic solutions were not sufficient. Referring to the second question, it was explained that the powers of States vis-à-vis a State that was involved in serious and widespread violations could be placed in three different perspectives. First, actio popularis, meaning the putting into action of diplomatic or juridical measures on the basis of each State having an interest in the protection of human rights; secondly, institutionalized sanctions in response to crimes such as breaches of the peace or threats to the peace, as envisaged in articles 2, 6 and 7 of the 1989 Resolution of the Institut de Droit International; and thirdly, countermeasures by third States in view of the obligation erga omnes to respect human rights. With regard to the last, it was stated that the use of armed force should be avoided and that the collective security mechanism in Chapter VII of the Charter should be respected. It was proposed that the Charter be modified to enable the Secretary-General to call sessions of the Security Council with a view to take measures against a massive violation of human rights.

85. In the discussion following the introduction, attention was drawn to the necessity of including questions relating to economic, social and cultural rights, especially children's rights. The whole of human rights must be considered indivisible, although the introduction only dealt with the category of certain basic rights. It was stressed that there was no such thing as a hierarchy in human rights, whether in the global-regional context, or with regard to so-called "generations" of human rights. However, international treaties were obviously the highest commitments undertaken by States. With regard to the monist-dualist questions, it was remarked that the monist approach was not necessarily the most effective approach in terms of human

rights implementation. Another issue brought up was the responsibility for human rights violations. In the absence of an international penal court, provisions in humanitarian law provide for some form of individual responsibility. Otherwise, the international responsibility of States applied. In the discussion on the topic of humanitarian intervention, it was remarked that the use of force could only be permitted when in conformity with Chapter VII of the Charter or in the most exceptional of circumstances. If the Security Council was unable to react, then a regional solution might be acceptable. In all cases diplomatic and economic measures were to be preferred (Barcelona report, pp. 8-9).

86. It was first stated that in Europe a distinction should be made between firmly established democracies and those countries who were in the process of freeing themselves from totalitarianism. Secondly, implementation of human rights standards depended on the political regime of a given country and the domestic legal and institutional mechanisms of implementation. With regard to the willingness of a Government to implement human rights standards, that was one of many factors. For example, implementation of social and economic rights depended on the state of development of a given country; implementation of civil and political rights depended more on political stability, the existence of democratic traditions, and to a lesser extent the economic situation. The totalitarian past of the Central and Eastern European countries was preventing those States from effectively implementing human rights standards. A beneficial factor in this regard was the influence from outside, especially of the Western States, which enhanced the participation in human rights processes and instruments. In particular the role of the European Bank for Reconstruction and Development was noted which tied human rights observance to making available financial aid. Turning to the implementation of economic and social rights in the countries formerly belonging to the Soviet Union, such implementation depended on the availability of resources, which were scarce, and these rights reflected certain socialist or social democratic ideals which were now very unpopular in Eastern Europe.

87. From the legal point of view, the implementation of international human rights standards was subject to a number of prerequisites. The first of these prerequisites is a multiparty system; secondly, an independent judiciary; thirdly, the existence of NGOs actively participating in human rights issues; and fourthly, freedom of information and expression. Domestic implementation of international human rights standards could be achieved in two different ways: direct application, and through domestic norms corresponding to international standards. The importance of making treaty norms directly applicable by a constitutional provision was stressed, first of all, because it provides for automatic application even in the absence of domestic provisions and secondly, because the automatic application by the courts guarantee their proper interpretation, especially when account was taken of interpretations by such bodies as the European Commission, the European Court of Human Rights and the United Nations Human Rights Committee. It should be noted that although many human rights provisions are of a non-self-executing nature, requiring a domestic legal provision, they nevertheless can have direct effect. Another point of interest was that there might always be a gap between legislation and practice, reason why international supervisory bodies always were interested in law and practice.

88. The relative virtues of dualism versus monism with regard to the implementation of international human rights standards was noted. It was stated that the number of political parties in a given country was not necessarily a good criterium for the determination of the enjoyment of human rights, however, the existence of a political opposition was necessary for the promotion of human rights. It was also stressed that local judges should be made aware of the interpretation by international judicial and quasi-judicial bodies through the publication of jurisprudence and a proper educational system. With regard to the standards embodied in the CSCE documents, it was said that - although not legally binding - could be used as a yardstick for domestic legislation (Barcelona report, pp. 32-33).

89. The era of standard setting is largely behind us. Now the time is ripe to improve implementation through special procedures and especially technical assistance and advisory services. Programmes relating to the latter should be encouraged and expanded (Barcelona report, p. 43).

90. The World Congress on Human Rights,

1. Appreciates the contribution of non-governmental organizations (NGOs) as the eyes and ears as well as the conscience of the worldwide community of human rights concerns;

2. Calls upon its member States, and all governmental and intergovernmental organizations to assist and sustain the establishment and development of human rights NGOs without compromising their freedom to facilitate their functioning with dignity;

3. Calls upon all human rights NGOs to pool their resources, to coordinate their activities, to collaborate among themselves and to work incessantly for the progressive realization of human rights, responsibilities and obligations;

4. Recommends

(a) translation, by or with the assistance of NGOs, of United Nations documents on human rights into different national languages and their dissemination for human rights literacy, education and research with a view to making people at large aware of all human rights, responsibilities and obligations;

(b) free and ready accessibility of NGOs to all documents and reports of transactions relating to their country in the United Nations system;

(c) an organized campaign by NGOs to request their Governments to ratify all United Nations human rights instruments and for setting up effective mechanisms for guaranteeing compliance with them;

(d) special attention by the United Nations Information Centres and the United Nations regional offices in their several locations all over the world to ensure easy availability of the campaign materials and resolutions passed and other similar information related to human rights and published by the United Nations to all concerned and interested groups;

(e) use of student associations/unions of colleges and universities as an effective means of reaching the youth with a view to enlisting their active participation in the worldwide human rights movement;

(f) training and other programmes and preparation of kits to acquaint NGOs and voluntary professional workers and to devise functionally useful formats;

(g) development and adaptation of flexible and simple as well as elaborate documentation systems in respect of human rights and their violations in the world for the use of NGOs;

(h) workshops, group discussions, exchange programmes, seminars and other human rights meetings, more particularly in the developing world, with a view to progressive geographical decentralization of the Centre for Human Rights in Geneva and its activities;

(i) selection by NGOs of certain human rights instruments and United Nations resolutions and campaigns by them for their implementation by Governments and the United Nations;

(j) technical facilitation and dissemination of human rights awareness, education and research by the Geneva-based International Service for Human Rights;

(k) emphasis by NGOs on the essential connection between development, especially of disadvantaged people, and human rights, especially economic, social and cultural rights;

(l) strict compliance and pre-audited by all international aid and lending agencies in respect of the mandate of human rights observance in all their activities;

(m) public education and public interest campaigns by NGOs whenever human rights are violated in the name of or under the cover of "development" which undermines and impairs human rights;

(n) support by NGOs for a United Nations Convention against Religious Intolerance; and

(o) coordination by international human rights NGOs with national and local human rights NGOs based on the recognition of the local and national NGOs as the grassroots foundation of the worldwide movement for human rights, responsibilities and obligations (New Delhi, Final Act, Part II).

91. The World Congress on Human Rights,

1. Affirms and reiterates the vital importance of ensuring the progressive implementation of human rights responsibilities and obligations throughout the world and the crucial role which institutions and mechanisms of redress and accountability play in the fuller realization of human rights;

2. Calls upon all Governments, which have not done so, to ratify all human rights instruments, in particular (a) the International Covenant on Economic, Social and Cultural Rights, (b) International Covenant on Civil and Political Rights, and (c) the Optional Protocols thereto;

3. Calls upon all Governments to take immediate steps, including new legislation, to bring their national constitutions and legislations in conformity with international human rights norms;

4. Calls upon all Governments, which have not met their financial obligations under human rights instruments to ensure the efficient operation of the respective implementation mechanisms, to do so urgently;

5. Urges States parties to international human rights instruments to observe meticulously the criteria relating to the candidates nominated and elected to treaty-based and other human rights bodies as stipulated in the international instruments thereby ensuring their independence;

6. Calls upon (a) the Governments of Asia and the Pacific region to follow up earlier initiatives undertaken to examine the feasibility of establishing effective regional mechanisms for the protection and promotion of human rights in Asia and the Pacific region, (b) the United Nations Secretary-General to facilitate the holding of seminars towards this purpose, and (c) the non-governmental organizations (NGOs) in the Asia-Pacific region to contribute and participate in this endeavour fully;

7. Calls upon the States parties to observe the norms, principles and standards formulated for the purpose of elaborating and effectuating human rights including those which relate to the remedial framework of implementation and enforcement and the independence of judiciary, the legal profession and the jurors and assessors;

8. Requests that the good offices role of the United Nations Secretary-General in cases of gross violations or threats of gross violations of human rights be extended;

9. Calls upon the United Nations to give serious consideration to the setting up of a Human Rights Council at the same level as the other principal organs of the United Nations to undertake a global watch on human rights, and in this organ provision be made for participation of relevant bodies including NGOs, United Nations specialized agencies, etc.;

10. Calls upon the United Nations to recognize the need for an effective spearhead for urgent action on human rights within the United Nations system and to accord renewed and serious consideration to the proposal for the establishment of United Nations Commissioner for Human Rights;

11. Requests that the United Nations Centre for Human Rights, Geneva, should ensure the widest possible dissemination of texts of human rights instruments in the relevant languages;

12. Urges (a) the further strengthening of the United Nations Programme of Advisory Services and Technical Assistance for Human Rights (b) regular evaluation by the recipients of the advisory services and technical assistance programmes as to their effectiveness in the protection of human rights and freedoms (c) setting up of training programmes for NGOs on implementation mechanisms as contained in the international human rights instruments (d) active collaboration between the United Nations Centre for Human Rights and UNESCO in holding regular human rights seminars for judges, lawyers, law enforcement agencies, armed forces, academics, parliamentarians, NGOs and other relevant groups, and (e) active support of UNESCO for human rights education programme of NGOs and other regional and local groups;

13. Proposes that the NGOs should give consideration to (a) the establishment of one or more regional associations of human rights workers which would take action on behalf of the human rights defenders who are persecuted or are under the threat of persecution (b) to set up a Human Rights Defenders' Fund to provide for legal defence and redress and other forms of assistance to the persecuted defenders and their families, and (c) to disseminate information to human rights NGOs and other human rights workers of the existing and proposed mechanisms for support of defenders in distress;

14. Welcomes the decision made by the United Nations General Assembly at its forty-fifth regular session to convene a World Conference on Human Rights in 1993, with a view to evaluating the progress made in the enjoyment of human rights and fundamental freedoms since the Tehran Conference of 1968 and to propose a programme of action for further strengthening and developing of the human rights programme for the next decade;

15. Recommends that (a) an International Steering Committee be established to undertake preparatory work for organizing an NGO forum parallel to the proposed 1993 United Nations Conference on Human Rights, (b) to work to that end, regional working groups be set up which would be represented in the International Steering Committee, (c) efforts must be made to ensure full and effective participation by national and international NGOs in the 1993 United Nations Conference, and (d) the United Nations Centre for Human Rights, Geneva, should facilitate access to all NGOs and concerned human rights groups to the host country in which the United Nations Conference and the parallel NGOs conference would be held;

16. Further recommends that the text of the Final Act of this Congress be widely disseminated and in this regard requests the United Nations Centre for Human Rights to take all necessary measures for dissemination of the Recommendations of the Congress to all United Nations bodies, Governments and international non-governmental organizations (New Delhi, Final Act, Part X).

Objective 4: "To evaluate the effectiveness of the methods and mechanisms used by the United Nations in the field of human rights" (resolution 45/155, para. 1 (d))

92. The efforts should also encompass an examination of any technical difficulties which countries, in particular small States, encounter in the translation of international standards into national legislation and in the

fulfilment of reporting obligations under the same texts. References were made in this context to the contribution which the Centre for Human Rights could make, acting upon requests from the Governments affected, by way of its programme for advisory services and technical assistance (Iceland report, para. 11).

93. In addition to adherence by Governments, the availability of human rights instruments in all national and local languages is an essential element in the enjoyment of the rights and freedoms set forth. The Preparatory Committee of the World Conference could request the Centre for Human Rights, the International Labour Office and UNESCO to make a comprehensive and coordinated listing of all available translations and the relevant publications in order to identify any gaps which might exist in the language coverage (Iceland report, para. 13).

94. While recognizing the human rights aspects of these and other themes, the tendency of classifying everything good and positive as human rights should be resisted. In some instances, components of the United Nations system other than the human rights programme may be better equipped to carry out the respective mandates. It must be remembered that individual human beings are the primary beneficiaries of human rights and that that must be kept in mind when the discussion moves into the more complex and sometimes contentious fields of development, environment and peace (Iceland report, para. 16).

95. The principal organs of the United Nations should increasingly and on a priority basis become involved in preventive action. The present report will come back to the role of human rights education and of advisory services and technical assistance in the field of human rights, which form a necessary part of the international response (Iceland report, para. 33).

96. International standards and procedures should increasingly pay attention to the security risks concerning flows of refugees, of people fleeing intolerable ecological conditions, hunger, etc., of internally displaced persons and of migrants, as so amply evidenced by recent events in different parts of the world. The root causes of most of these flows have to do with human rights violations and the connection needs to be studied and analysed (Iceland report, para. 35).

97. The World Conference may wish to study the relationship between human rights and humanitarian law in the grey area between peace and war, that is during internal disturbances, tension and strife. The relevant rules of contemporary international law are inadequate and tend to create an artificial barrier between the application of humanitarian law and human rights law; this is a situation which the Conference could clarify. In this connection, reference can be made to the Declaration of minimum humanitarian standards, informally adopted at Turku in December 1990 1/ (Iceland report, para. 36).

98. During the preparatory process, a thorough examination of the linkages between the respective standards and procedures would be useful. Additional issues could include violations of human rights and denials of democracy as the causes of conflict, refugee flows and mass exoduses; securing the right to

seek asylum; the human rights of refugees and victims of wars; the rights of returnees; the rights of internally displaced persons; similarities of and differences in international responses to man-made and natural disasters; and the concept that the right to offer and the duty to accept international assistance in humanitarian crisis situations go hand in hand (Iceland report, para. 37).

99. The Centre for Human Rights, the Office of the United Nations High Commissioner for Refugees and the International Committee of the Red Cross should coordinate and cooperate in the fulfilment of their duties, not least in areas of overlapping mandates, concerning all the dimensions of human rights in crisis and conflict situations. General Assembly resolution 45/153 calling on United Nations organs to use their respective competence for the prevention of new massive flows of refugees and displaced persons deserves attention by the World Conference (Iceland report, para. 38).

100. A number of international instruments, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, specifically stipulate the legal obligation of Governments to provide human rights education. The United Nations human rights programme, under the applicable implementation procedures and preferably with input from UNESCO and UNICEF, should aggressively pursue the realization of these obligations by screening curricula and teaching materials (Iceland report, para. 71).

101. Attention was drawn to the fact that the wording of a series of these provisions foresees a particular role for human rights education in the reduction and elimination of ethnic tension and ethnic conflict. It is important that persons belonging to minorities and indigenous peoples have an active role in the drafting and designing of teaching materials and in the use of these materials, on a two-way street, involving both the majority and minority populations. The interrelationship between human rights education, democracy and peaceful ethnic conflict resolution was emphasized (Iceland report, para. 72).

102. Plans by UNESCO to hold a conference on human rights education, as a contribution to the preparatory process leading to the World Conference, were welcomed, as were present plans of the Centre for Human Rights to draw up together with UNESCO a manual for human rights teaching at the university level. Such handbooks should be produced for all levels and types of recipients and the secretariat could be requested to produce drafts for consideration prior to the Conference. The ABC of Teaching Human Rights, Practical Activities for Primary and Secondary Schools issued by the Centre for Human Rights (New York, 1989) and the Manual on Human Rights Training for Public Officials issued by the Commonwealth Secretariat (London, 1990) are good foundations from which authors could draw lessons for additional texts (Iceland report, para. 73).

103. Members of law enforcement agencies, military men and women, prison officials, lawyers, judges, professors of law and other disciplines, school teachers ranging from elementary levels to adult training courses, and governmental and non-governmental field workers in the development and

humanitarian sectors, as well as other public officials, journalists and politicians, were pointed out as the most obvious targets of human rights training. Particular attention should be given to those who will be training other recipients nationally and locally (Iceland report, para. 74).

104. The World Public Information Campaign for Human Rights serves a useful role in promoting public awareness of human rights standards and procedures. With reference to remarks elsewhere in this report and to international resolutions making the same request, the Campaign should be expanded and materials produced in larger numbers and in more languages in order to reach the general public in all parts of the world (Iceland report, para. 75).

105. The initiative and growing activities of the Centre for Human Rights in providing advisory services and technical assistance to requesting Governments were praised. So was the joint action already undertaken or being considered by the Centre for Human Rights with, inter alia, UNDP, UNICEF, ILO, UNESCO and the World Bank, as well as separate activities under way within these and other components of the United Nations system. The World Conference might want to recommend enhanced coordination between all of these actors in their endeavours (Iceland report, para. 76).

106. The cooperative and non-confrontational efforts falling within this category of work are well suited to encouraging and enhancing compliance in the long haul and technical assistance can usefully strengthen national institutions and infrastructures. At the same time, the relationship between adherence to the instruments, the implementation procedures and technical cooperation was stressed. In the selection and execution of projects, it must be ensured that technical contributions are relevant to the needs and situations of the countries receiving assistance (Iceland report, para. 77).

107. The role of technical cooperation was underlined with reference to remarks made above concerning increased adherence to instruments, integration of human rights into the development and humanitarian processes, and human rights education (Iceland report, para. 78).

108. The activities undertaken by NGOs, include dissemination of information about the United Nations, campaigns against the arms race, and maintaining links of communication with Government. In this connection NGOs could have a decisive voice in parliamentary commissions. The opinion was expressed that human rights should be included in educational programmes at all levels.

109. The latter suggestion included the idea that it was particularly important to find ways to make the topic attractive to children. The importance and valued role of NGOs in the promotion and protection of human rights both nationally and internationally was stressed (Barcelona report, p. 34).

110. There is a pressing need for the countries in the European system to place the issue of refugees (in a broad sense) on the political agenda in order to develop a common approach (Barcelona report, p. 44).

111. The concept of academic freedom has not yet an internationally accepted definition despite several declarations on the subject. Also, it is not an internationally accepted human right, even if it has been acknowledged as a basic principle for research and teaching. Whether a definition is needed or not is a controversial issue.

112. Academic freedom implies a right of academics in relation to their research. The choice of subject, use of method, theoretical analysis and the dissemination of the results of the research, whether in written or oral form, all belongs to the sphere of academic freedom. The totality of these elements in the concept is both directed to the individual scientist or a group of scientists. A precondition for the establishment of an academic freedom is that universities stand autonomous from external interferences and claims. The external interference can be from the State, private companies, churches or other institutions and individuals who might wish to influence the research in one way or another.

113. During the seminar there was a consensus as to the question of teaching as a part of academic work and thus a part of academic freedom. Much of the discussion centred on the possibility of an international and intergovernmental standard-setting exercise on the subject of academic freedom. Several participants in the seminar expressed views that this process should preferably result in a recommendation from the forthcoming UNESCO Conference in Sinaia, Romania, to the UNESCO Conference on Human Rights, Education and Democracy in Montreal and subsequently to the World Conference on Human Rights in 1993. This should be directed to either the United Nations or UNESCO. The question then arose whether there is a need to promote academic freedom as a separate human right. In existing instruments for the protection of academics and their research, inter alia, the International Covenant on Economic, Social and Cultural Rights (art. 15), and in many constitutions of States under the headline of human rights, academic freedom seems already to have an adequate protection. It was argued that it was primarily a question of effective implementation of these and other existing rules.

114. The right to academic freedom does not seem to be a right in itself that can be claimed in a court of law. To qualify as a human right, the issue needs a special justification, it was argued. Today, it is difficult to promote further standard setting in the field of human rights, due to the view that there are already sufficient numbers of protected rights and freedoms for the individual. What is really needed, according to this view, is effective implementation of existing rights. Thus, to establish a special protection for one explicit human right, there has to be something special that will justify this particular protection. However, there seems to be good reasons for a special protection. With reference to recent publicatitons by WUS and Africa Watch 1991 it was discussed in detail that academics in a number of countries, are frequent victims of violations and sufferings which need to be addressed by the human rights community. This freedom is of course related to people working in an academic community. But the task to define, include and exclude persons from this field was a difficult matter. It can be possible to say that only academics, within the strict meaning of researcher should be the prime beneficiary and that the right/freedom should be differentiated depending on this categorization.

115. Another distinction in the discussion on beneficiaries was made between the individual and the collectivity. The proposed autonomy of academic institutions (universities) raised the question whether there could be collective beneficiaries. A distinction between the individual and the institution was favoured, as was mentioned earlier, and the autonomy of institutions was recognized as a precondition for academic freedom. However, it was not settled if this autonomy should be named academic freedom.

116. There is an obligation for States to provide human rights education. This implicitly provides academics with a responsibility to give such education, since most international instruments on human rights are ratified by States. Thus academics, according to this argument, have a duty to provide human rights education. Responsibility is a natural corollary of freedom, but on the other hand it was argued that duty and responsibility stand in contra-distinction to one another.

117. It was agreed that the duty is strongly connected with a responsibility on the behalf of the individual academic. If there is a duty for the academic to educate, this is seen as a component in the expression of academic freedom. This duty is something more than an obligation, which arises out of a contractual relation. On the other hand, it was argued that academics have a duty to educate, as a major element in their profession as scholar, but this duty has to be distinguished from an obligation to teach. What is seen here is the close link between research and teaching in contra-distinction to teaching as a profession in lower levels of education. The conclusion of this seems to be that an academic, in principle, has a moral duty to educate and to disseminate the results of the research. Academics with a freedom to make decisions with respect to literature and forms of education, thus have a responsibility in their behaviour and expressions.

118. A great deal of discussion surrounded the question whether the individual academic can express a political approach or not. For instance, there was some agreement of the irrelevance of expressing political opinions in natural science and technology, but in political science, for example, it was thought as almost unavoidable to express subjective opinions. In the case of education, it was suggested that if a student could not express a contradictory view, then a political approach on the behalf of the academic was not within the limits of academic freedom. In this discussion on politics in academia, a consensus was reached. The concept of political opinions and political activities should be separated. It was agreed these activities more or less should not be relevant in the academic community. But, the meaning of political activities was not further elaborated.

119. In the human rights agreements which have been adopted since World War II there is no provision which explicitly mentions the term "academic freedom". However, this does not preclude that a number of provisions may be of importance with respect to this subject. The perhaps most important principle related to academic freedom is the right to freedom of expression. This is prescribed for in the United Nations Universal Declaration on Human Rights, article 19, and the United Nations Covenant on Civil and Political Rights, article 19:2. The freedom of expression includes the freedom to seek, receive

and impart information, either orally, in writing or in print. Of importance in this context is the non-discrimination clause in article 2:1 of the Covenant. A contracting State must ensure to all individuals the rights without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Another treaty obligation of importance to the concept of academic freedom is article 15:1 (c) of the Covenant on Economic, Social and Cultural Rights which prescribes, that a contracting State recognizes the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific production of which he is the author. This is, in fact, a declaration of copyright raised to the rank of a human right, and as such a rare example of a right to be implemented in the Covenant on Economic, Social and Cultural Rights. The article cannot be interpreted as an obligation to reveal scientific secrets.

120. A highly debated question is if a State is responsible to prevent scientific and technological development in areas harmful to mankind. The 1975 United Nations Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind prescribes that all States shall take appropriate measures to prevent the use of scientific and technological developments particularly by the State organs, to limit or interfere with the enjoyment of that human right and fundamental freedoms. In the same instrument it is also prescribed that States shall take measures to protect the population "both socially and materially, from possible harmful effects of the misuse of scientific and technological developments". The main argument for a separate codification was that instruments for implementation and monitoring of academic freedom must be to some extent more effective than in existing documents, and that a new instrument should be "hard law", i.e. legally binding for ratifying States.

121. Also, it was argued that the Committee on Economic, Social and Cultural Rights and the International Labour Organisation could be effective monitoring organs in appplying these provisions. It was emphasized that a lengthy process of standard setting and drafting of provisions was not always the only method for the realization of stated goals. A number of alternatives were pointed out, among them, a more active use of implementation procedures for the relevant rights and freedoms which also would be more in line with the established objectives of the World Conference on Human Rights in 1993. If it comes to standard setting additional options were mentioned such as a general comment by the Committee monitoring the Covenant on Economic, Social and Cultural Rights, in particular in light of its articles 15 and 23. In this connection, the ILO was mentioned as a possible forum both for the standard setting and implementation of academic freedom.

122. The question of the need to develop cultural and educational rights, in accordance with academic freedom was discussed. It might be desirable to draft new provisions in order to transform soft law into hard law. Academic freedom must be seen as a cultural right, it was maintained, but further elaboration and development of cultural and educational rights is needed.

123. As to the question of necessity to codify already existing provisions in a new separate instrument, albeit with a stronger implementation machinery, there was a clear majority favouring this argument amongst the participants in the seminar.

124. It was argued that academic freedom is not possible without some limitations. Limitations are inherent in the concept of rights and freedoms, it was maintained. Academic research is connected to the needs of the society and this implies certain limitations. These limitations can be distinguished in two separate categories, the objective and subjective limitations. In principle, academic freedom implies a freedom to perform research in any area or subject with acceptable means and methods. However, it was argued that academic freedom should not be that unlimited. It was argued that there are certain desirable objective limitations concerning (1) research which could damage the environment or human life; (2) research connected with already prohibited activities or objects as certain weapons; and (3) research leading to a prohibited use of force in contradiction to established legal provisions. Also, the dissemination of fascist ideas was mentioned as a possible objective limitation of academic freedom, and limitations according to specific internal situations. Each State might need distinct limitations. The subjective limitation consists of self-censorship and responsibility on the behalf of the individual academic.

125. Academic freedom should in principle be "free", but in close connection with this freedom is the corresponding responsibility on the behalf of the individual academic. Besides, there should be a distinction between fundamental research which is developing knowledge in new areas and more elaborated research in established areas of knowledge. It was suggested that fundamental research, in principle, should be conducted without restrictions. Another intricate component of the limitations was external interference within academic activities. Interferences can come from States, business corporations, churches or other subjects. It was argued that an interference in all public institutions is important. Because the State and the members of the society are in most cases paying for the research and should have the right to lay down some moral guidelines on which research the society can benefit from and make progress. If there should be certain limitations to academic freedom, it must be settled by whom these will be decided. One suggestion forwarded, was that an independent organ should decide on permissible limitations at the national level. Another wanted international cooperation in a variety of standard-setting of limitations. A third view maintained the importance of a list of restrictions in an international instrument.

126. The Seminar was seen as a preparatory meeting in a process which could result in the adoption of an international agreement relating to academic freedom.

127. It was also decided to establish a working group in consultation between the UNESCO Division for Human Rights and Peace, and the Raoul Wallenberg Institute. The purpose of the working group would be to draft an agreement on academic freedom, which would then be discussed at a seminar arranged by the

Human Rights Centre at the Poznan University, Poland in October-November 1992. The topic would be discussed on the UNESCO Conference on Human Rights, Education and Democracy, in Montreal, Canada scheduled for February-March 1993, and thereafter reporting to the 1993 World Conference on Human Rights (Lund report).

128. The World Congress on Human Rights,

1. Reiterates that human rights are indivisible, and include civil and political rights; economic, social and cultural rights as well as solidarity rights;

2. Urges that:

(a) human rights education should be understood as encompassing formal, non-formal and informal eduction, and should aim also to reach parents and policy makers;

(b) the introduction of human rights issues in the formal curricula should be a political decision and not only a technical or procedural matter;

(c) human rights education should not be only intellectual or informative but should also involve action-oriented learning processes;

(d) human rights should not only be incorporated in the formal curriculum as a separate subject but should also be integrated into the entire curriculum, including the hidden curriculum, i.e. the culture of schooling;

(e) human rights education should be included in teacher training institutions and programmes;

(f) teaching materials on human rights should be further developed, within a consistent framework, stressing the inherent dignity of the human being and representing real and concerete situations and needs;

(g) human rights teaching materials should be produced in different forms, both written and audio-visual. Written materials for international use should preferably be made available in the United Nations languages as well as others; and

(h) the United Nations Centre for Human Rights, Geneva, should hold a series of practical workshops at the earliest to further develop human rights teaching materials for schools. These workshops should bring together those directly involved in producing this material, from intergovernmental, teaching and non-governmental organizations from different regions of the world. Manuals for teaching human rights, as published by the United Nations Centre for Human Rights as well as by others, may form the basis on which local teaching material can be further developed;

3. Notes that most non-governmental organizations (NGOs) are small and have limited resources for information handling. They are trying to increase their capacity to obtain and disseminate the right information at the right time to the right people;

4. Emphasizes that sharing of information can best be done in a decentralized network in which the participating organizations:

- are conscious of the role and importance of information handling and exchange;

- have or can obtain the competence necessary for systematic information handling;

- agree upon the standards to be used for exchange;

- know about the efforts of other organizations and build up collaboration and trust in the quality of each others' work; and

- work out a division of labour among themselves in which each organization handles information within its area of relative competence and duplication of labour is narrowed down;

5. Urges that documentation centres and organizations concerned with human rights should agree on a bilateral and multilateral division of labour in which each organization focuses upon its area of relative expertise, and technical preconditions for exchange of information are guaranteed. Further efforts should be made to develop an agreed and common vocabulary for the exchange of human rights information;

6. Stresses that Governments and intergovernmental organizations should provide resources for training of documentation workers in tools and techniques for human rights information handling. In consultation with NGO networks, training should be promoted in particular at the local level so that human rights organizations can strengthen their information handling capacity;

7. Recommends that collaboration between intergovernmental and non-governmental organizations with regard to human rights information should be based on the following principles:

(a) wide and easy public access to all intergovernmental organizations' publications should be maintained and, where possible, srengthened;

(b) plans and projects of intergovernmental organizations to improve the dissemination of information and documentation, in particular to establish computerized databases, should be made publicly known as early as possible and human rights NGOs should be invited to participate in their development;

(c) collaboration in the development of information handling tools and an agreed terminology as basis for exchange of information; and

(d) efforts made by the intergovernmental organizations to assist in establishing or strengthening national centres for human rights information and documentation should be intensified. NGOs should be involved in these programmes;

8. Emphasizes that:

(a) the most valuable human rights research is often long-term based and contributes substantially to the struggle for human rights;

(b) the quality of human rights research depends greatly on the establishment and strengthening of research centres related both to academic and independent institutions. Such centres would have to attract the interest of professionals and activists of various disciplines and areas. Human rights research should be interdisciplinary in approach;

(c) the preconditions to carry out human rights research, such as academic freedom and technical support, are better in politically stable societies. Such conditions allow the building of permanent research institutions;

(d) innovative teaching and research at university level should be promoted;

(e) in order to ensure expansion of university teaching programmes, the publication and dissemination of human rights research should be widened; and

(f) most academic gatherings in the field tend to take place in the so-called First World with too little participation of researchers from the so-called Third World. In order to achieve cross-fertilization and mutual enhancement, participation of human rights researchers of the so-called Third World should be strengthened;

9. Recommmends that:

(a) it is necessary to develop further effective contracts and networks among human rights research centres in order to improve communication at the global level. More use should be made of modern and/or alternative means of communication; and

(b) the question of funding human rights research will continue to be difficult as action-oriented work is more easily funded than research. Action-oriented human rights NGOs should take account of the long-term research value of their activities. Therefore, they should seek means to finance the products of research and their dissemination (New Delhi, Final Act, part IX).

129. Conclusions and Recommendations

The following are more specific conclusions and recommendations:

1. The most relevant approach to reshaping university governance to meet the new conditions is not likely to be either the traditional internally oriented governance model or a fully market driven model. Rather it is likely to be a new system that adapts the best of the two systems.

2. The primary objective of joint ventures with the newly democratic countries should be capacity-building.

3. Comparative research is needed on these issues both at micro- and macro-levels. At the macro-level, this research should include such subjects as research on emerging models of governance and accountability. At the micro-level, research might address changes in specific curricula or the use of new technologies, etc.

4. Better East-West cooperation is needed. One approach would be to create institutes in central and eastern Europe focused on training leaders for higher education. Training should be at both the macro- and micro-levels. Such institutes should have close links with similar institutions in western Europe and North America and to international organizations. Another approach would be to create specific, standing consortia of universities for an ongoing East-West dialogue.

5. Expand what is already working. European and American exchange agreements, UNESCO projects and other projects including the European Communities, OECD, etc., exist. Many of the exchange agreements need Government funding to supplement private and university funding in order to reach an appropriate scale. Expand existing modes of dissemination as well.

6. Where privatization of universities is occurring, new forms of quality assurance are needed. These might include:

   - voluntary accreditation;

   - a requirement for the chartering or the licensing of institutions;

   - a system of external review;

   - the reporting to the public of measures of quality such as graduation rates and student performance rates.

7. Ensure a focus on teaching and learning in a pluralistic society. This will require new approaches to teaching and learning. There is already a CEPES project that can be utilized as it is focused on staff development.

8. Develop new approaches to the use of technologies. These might include teleconferencing and computer linkages to supplement East-West meetings and to speed the exchange of ideas. New technologies can also speed dissemination of materials, supplement faculty exchanges, etc.

9. Preserve the conection with both western Europe and North America. With the growing significance of European cooperation and the emergence of North American cooperative efforts, two dangers should be avoided: first, the development of competing and unconnected blocs rather than a broad, intercontinental cooperation effort; second, the degeneration, once established, of large cooperative efforts into bureaucratic endeavours that shut off the opportunity for flexibility and experimentation at the campus level (Sinaia report, pp. 23-25).

RECOMMENDATION

130. The Sinaia International Conference on Academic Freedom and University Autonomy,

- Aware of the increasing international importance attached to higher education and its impact on society;

- Recognizing the concepts of academic freedom and university autonomy as essential elements for the fulfilment of the mission of universities,

- Stressing the importance of the notion of the accountability and the social responsibility of universities,

- Taking into account the efforts to develop an international understanding on academic freedom and university autonomy such as the Magna Carta of European Universities (Bologna, 1988), the declarations of Lima (1988), Kampala (1988) and Dar-es-Salam (1990) and the outcome of several recent meetings of international academic organizations,

urges UNESCO to give the matter of academic freedom and university autonomy its utmost attention and to prepare an international instrument for the protection and promotion of these values (Sinaia report, p. 30).

Objective 5: "To formulate concrete recommendations for improving the effectiveness of United Nations activities and mechanisms in the field of human rights through programmes aimed at promoting, encouraging and monitoring respect for human rights and fundamental freedoms"
(resolution 45/155, para. 1 (e))

131. The treaty-based bodies should continue the rationalization of work which the meetings of the chairmen have begun, including the simplification and non-duplication of what are now cumbersome and repetitious reporting duties. Not counting instruments administered by the specialized agencies and by regional organizations, nine United Nations human rights conventions contain reporting obligations and the tenth is expected to enter into force in the near future (Iceland report, para. 56).

132. The World Conference could consider the possibility of each State preparing a single overall report concerning all the conventions (international and/or regional) to which that State is a party. Each treaty-based organ would then deal with the part of the report which falls within its competence (Iceland report, para. 57).

133. Non-governmental organizations should gain a substantive say in the preparation of truly self-examining national reports to the treaty-based bodies. The compilation of national reports to different treaty bodies, some of which are serviced by different organizations, must also be coordinated between all the Government agencies and ministries concerned (Iceland report, para. 58).

134. The treaty bodies should be encouraged to make full use of the powers granted to them under the respective conventions and rules of procedures. Depending on the treaty, such powers might include examination of State party performance, notwithstanding overdue reports, the adoption of findings or recommendations on questions of compliance, and procedures aimed at follow-up to recommendations. With regard to communications, oral hearings of the parties which may not be expressly excluded by the instrument concerned would be a welcome strengthening of what are already emerging as adversary proceedings (Iceland report, para. 59).

135. Compensation to victims of human rights violations should be pursued by the monitoring bodies in line with existing and clear provisions to this effect in several treaties. The report under preparation by a special rapporteur of the Sub-Commission could form the basis for additional deliberations by the Conference on this issue (Iceland report, para. 60).

136. Procedures should be developed and additional doors opened for non-governmental as well as intergovernmental organizations to channel information to the treaty-based implementation bodies in order to facilitate their examination of reports by the States parties. The secretariat should also seek and solicit relevant information, for example by obtaining access to existing intergovernmental, governmental and/or non-governmental databases (Iceland report, para. 61).

137. The case law flowing from the treaty-based bodies and the general interpretative comments which they have adopted should be given wider dissemination and purposefully communicated to the other treaty bodies and to the organs and experts working under the resolution-based procedures. In the same manner, the treaty-based bodies should automatically be given access, by way of in-house coordination, to country information accumulated under other procedures (Iceland report, para. 62).

138. The possibility of establishing one or two standing super-organs to take over all or some of the functions of the treaty-based committees is worth examining. The consolidation of the existing network of treaty bodies, although desirable, would in the first instance require an expert study of the considerable technical and political difficulties involved, including the form and contents of amendments to the provisions of the conventions affected (Iceland report, para. 63).

139. As stated above, the cooperation between conventional and extraconventional mechanisms, and the coordinated secretariat servicing of the same, should be the subject of a study, with a view to enhancing the flow of information and improving effectiveness (Iceland report, para. 64).

140. Consideration should be given to the possibility of declassifying the dossiers of case histories under Economic and Social Council resolution 1503 (XLVIII) complaints procedure once they reach the mature age of 10 or 15 years. Public access to such dossiers would serve a preventive role and scholarly treatment would provide external review and renewed faith

in a procedure which remains mysterious to some. Dossiers which have already been made publicly available with the consent or at the request of the Governments concerned should be published for the same purpose (Iceland report, para. 65).

141. As stated above, a communications procedure should be introduced under the International Covenant on Economic, Social and Cultural Rights. In the absence of such a procedure, however, existing resolution-based petition or special procedure systems should be expanded to cover systematically alleged violations of economic, social and cultural rights, in particular the respective equality in enjoyment and non-discrimination clauses. A report under preparation by a special rapporteur of the Sub-Commission on the realization of economic, social and cultural rights, including his progress reports on human rights indicators and on the role of development and financial institutions in the United Nations system, will further contribute to any debate on these issues (Iceland report, para. 66).

142. Today, under the implementation procedures in force, human rights experts and organs of the United Nations issue reports and recommendations with their observations and findings on a variety of situations. As to national implementation undertaken by the addressee, only one organ has instituted machinery for a regular follow-up procedure. In 1990, the Human Rights Committee appointed a special rapporteur on the follow-up of views, i.e. decisions on the merits adopted under the Optional Protocol to the International Covenant on Civil and Political Rights. The first replies received from Governments under this procedure are encouraging (Iceland report, para. 67).

143. In order to enhance the effectiveness of the United Nations human rights programme, the World Conference should address methods of following up reports and recommendations issued under both the treaty- and resolution-based procedures. Prior study of possible follow-up methods, including appointments of special rapporteurs and/or express mandates to the secretariat, would facilitate the deliberations (Iceland report, para. 68).

144. The main topics covered were: general presentations on implementation of human rights standards, minorities and refugees; the United Nations system for the promotion and protection of human rights; the United Nations treaty-based mechanisms; and regional and national institutions for the promotion and protection of human rights (Barcelona report, p. 3).

145. It was stated that the end of ideological confrontation and the return to multilateralism were bringing about fundamental changes in the United Nations. The organization was taking on new and innovative approaches to problems and many were reflecting on how to better equip it to deal with the challenges ahead. Human rights should be an essential element in these reflections. The Centre for Human Rights' response to these changes was reflected in the exponential expansion of Advisory Services and Technical Assistance Programme in the Field of Human Rights. A number of human rights violations occurring throughout the world and to the necessity to continue to improve the machinery for human rights protection was highlighted. The United Nations system for the international protection of human rights was

based on the three main pillars of legislation, implementation and education/information. In the field of legislation there was a wide range of issues touching almost every area of human life covered by existing human rights standards, built up around the Universal Declaration of Human Rights. International mechanisms had been developed to oversee compliance by States with their international undertakings. Among these were the treaty based committees of independent experts, and Special Rapporteurs and Working Groups dealing with particularly serious situations or phenomena of human rights violations. It was submitted that the United Nations human rights standards and machinery has had a positive impact on the quality of life throughout the world. Patterns of violations had been curbed through the spotlight of international attention, which had contributed to the favourable evolution of situations in specific countries, including a return to democracy. In general, today's human rights problems needed effective implementation of existing norms rather than elaboration of existing standards. A key element in the Centre's strategy of implementation was the revitalized Advisory Services and Technical Assistance Programme in the Field of Human Rights. Under this programme assistance was provided to Governments in the form of expert advice in the legal and technical aspect of democratic elections, in drafting national laws to conform to international standards and in setting up national institutions for the protection of human rights. Furthermore, the Centre organized workshops, seminars fellowships and training courses for administrators of justice, judges, lawyers, police, military forces and prison officers to help ensure that human rights standards are respected in practice. Central in the Programme was the promotion of democracy and the strengthening of democratic institutions, since democracy was an essential element for the full enjoyment of the broad range of human rights and fundamental freedoms. In this sense, Eastern and Central Europe had provided unique opportunities to act in this sense. Several workshops were held in Moscow and Kiev, especially aimed at officials from Central and Eastern Europe. The Centre provided expert assistance to the Government of Romania in the legal and technical aspects of the first free elections and drafting the human rights provisions of the new Constitution. Similar assistance was provided to Albania. Outside of Europe, the Centre provided assistance to a great number of countries and institutions in Africa, Latin America and Asia. The activities of advisory services and technical assistance were underscored as complementary to the existing monitoring and investigation procedures. The number of requests for assistance under the programme grew significantly each year and increased funding was now needed. Practical experience with these activities, provides a non-political basis for discussion and diffusing national tensions through the provision of information on relevant experiences elsewhere.

146. In the field of information the Centre has stepped up its efforts to provide up-to-date information in appropriate forms to the general public and those professionally interested in human rights.

147. In all of the above-mentioned activities, the Centre has taken the initiative to closely cooperate with other sectors of the United Nations Secretariat and the specialized agencies.

148. Importance of the CSCE process for standard-setting and development of mechanisms in the field of human rights was stressed. There was a considerable overlap between CSCE activities in the field of human rights and those undertaken in the framework of the United Nations Human Rights Programme. This warranted a focus of attention on how the United Nations Human Rights Programme might contribute to achieving the aims of the CSCE Human Dimension Process and on how the activities of each could be mutually reinforcing. Duplications could be avoided, the high quality of existing standards maintained and coherent approaches to emerging problems studied.

149. In the process of rethinking the activities of the United Nations, a great deal of thought was given to effective action in situations of massive and systematic violations of human rights. Protection of human rights involved a concerted exertion of international influence and pressure through international appeal, admonition, remonstrance or condemnation and an appropriate United Nations presence. One of the Organization's principal concerns will therefore be to find practical ways of achieving that objective. A basis could already be found in the activities of UNHCR in countries of origin. Other examples could be found in the actions of the United Nations with regard to El Salvador, Cambodia and the Kurdish population of northern Iraq.

150. Three elements might be taken into consideration in designing the machinery to be set up to enable the United Nations to act with regard to threats to, or actual large-scale violations of, human rights. The first element was the existing wealth of information on the human rights situation in the world from a variety of sources. Review of that information would give a rather accurate picture of prevailing situations, provide advance warning of approachng troubles and perhaps point out roads to solutions. Secondly, involving independent experts at the initial stages of actions against violations had proven to be an evenhanded and objective method. Existing systems for the protection of human rights based on the initiative of Governments had been rarely used and have yet to demonstrate their effectiveness. Thirdly, we should aim at building up an institutional memory which would allow us to learn from past experiences and to develop objective procedures.

151. Taking these factors into consideration, one approach could be to engage the Secretariat in reviewing already available information - both from Governments and non-governmental organizations - and analysing it in a systematic way. Such information could be submitted to a body of independent experts, which could identify emerging problems, seek out ways of establishing a constructive dialogue among those directly concerned and propose appropriate action to United Nations policy-making bodies. It was clear that action should be taken quickly and decisively to deal with impending or actual human rights violations as part of our response to the human rights challenges of the 1990s.

152. Attention was drawn to the existing framework for dealing with ethnic tensions and minority problems, both within the United Nations and the CSCE. United Nations and European standards could provide a non-partisan framework within which the relationship between minorities and the majority could be

worked out. In this context it might be considered worthwhile to consider setting up a working group or special raporteur on minorities to assist in identifying problems, promoting dialogue and finding solutions; information could be solicited from a wide range of sources, dialogues be established on specific problems and fact-finding missions be held by this working group or special rapporteur.

153. The objectives of the World Conference on Human Rights, to be held in 1993, will be to review and assess progress in human rights, to improve implementation of human rights, and to improve the effectiveness of United Nations activities and mechanisms. The ideas emerging from meetings such as this will be an essential contribution to achieving the objectives of the World Conference (Barcelona report, pp. 4-7).

154. It was pointed out that the Commission on Human Rights reflected the composition of international society. At the initial stage of human rights promotion by United Nations organs, there was a discrepancy between the lofty goals in the Universal Declaration and the limited possibilities of action by United Nations organs. Standard-setting proved to be the principal concern, highlighted by the adoption of the two International Covenants. All human rights issues were thus conceptualized, with the exception of two: collective human rights and the so-called third generation rights such as the right to development and the right to a healthy environment. With regard to the first of those issues, it was stated that the minority issue could not be solved without rethinking this issue. The United Nations, rather than the CSCE and the Council of Europe, could provide a valuable contribution in this respect, because of the presence of less individual-centred cultures. Similarly, economic, social and cultural rights should no longer be seen as matters of policy, but as real rights, which, however, required a different realization and implementation system. With regard to the second issue to be clarified, it was remarked that clarity in this respect was very much needed, because of the shift from an East-West controversy to a North-South controversy.

155. Turning to implementation mechanisms, it was said that the Commission gradually authorized itself to deal with human rights violations, in particular with regard to situations which revealed a consistent pattern of gross violations of human rights. Special Rapporteurs and Working Groups were appointed to look into situations in specific countries, although the criteria for deciding so were not always applied equally. Later, a thematic approach was taken with regard to issues such as disappearances, torture, summary executions. This approach was less selective in character as it dealt with the implementation of a given right in all countries, meaning that all States were now vulnerable to scrutiny. As a consequence, the argument that human rights are essentially within the domestic jurisdiction of a State has effectively been dealt with. Victims of violations are now in a position to point their finger at States through NGOs.

156. Looking at the structure of the human rights programme, it was stated that the first layer consisted of standard-setting, the second layer consisted of implementation, and the relatively new and important third layer consisted of advisory services and technical assistance. Activities in this field were undertaken in a spirit of international cooperation at the national level, taking into account local conditions and circumstances.

157. Turning to the possibilities of coordination between the United Nations, the CSCE and the Council of Europe, it was said that the difference between the latter two was one of legal versus political commitment. The mechanisms elaborated in the CSCE could prove to be of interest to the United Nations. There was a risk that European States were tempted to consider the European systems more important than the United Nations. The increased membership of the Commission on Human Rights might cause Western States to lose interest in the work of the Commission.

158. The view was expressed that there was currently a numerical advantage for democratic States in the controversy with totalitarian States. As a consequence a fully engaged Western group aligned with the emerging democracies could restructure the dialogue on the whole spectre of human rights. With regard to the issue of group rights, it was said that this issue should be demystified and preferably approached from the procedural point of view; there was no reason why collectivities should not be able to address issues before political and quasi-judicial bodies. The freedom of association provided the scope for this approach, but perhaps that more affirmative action was necessary. Attention was drawn to the collective exercise of autonomy, for example in Catalonia.

159. Focus was placed on the relative effectiveness of a special rapporteur vis-í-vis a working group. The opinion was expressed that a special rapporteur was more cost-effective and could be held accountable better than a working group. Furthermore, working groups were prone to political debate. In general, there should not be too much uniformity in procedures and working methods. Each rapporteur had his own style and each issue required a specific approach.

160. A question raised was why it had taken the United Nations rather long, as compared to the ILO, before a complaints mechanism was put into action. Study of this question might provide valuable information for the World Conference on Human Rights to take place in 1993. A possible answer was that the ILO had succeeded to stay out of the political spotlight, which had considerably contributed to its effectiveness (Barcelona report, pp. 12-14).

161. The protection of the individual was regulated through a system of indirect judicial recourse, quasi-judicial conventional procedures, and extra-conventional mechanisms of international protection. With regard to the latter, attention was drawn to institutions such as the High Commissioner for Refugees, permanent intergovernmental bodies, such as the Committee against Apartheid, and the substantial number of mechanisms which had been set up by ECOSOC and/or the Commission on Human Rights.

162. Turning to special rapporteurs, the expert explained that between 1979 and 1991 there had been a proliferation and consolidation of the practice of nominating Special Rapporteurs to investigate the situation of human rights in a particular country. Examples included Chile, Guatemala, Afghanistan, Romania and Iraq. Between 1980 and 1991 special bodies or working groups were set up to investigate violations of given human rights on a worldwide basis (torture, disappearances, summary executions, arbitrary detention etc.). Moreover, between 1980 and 1991 action was taken with regard to individual petitions through urgent action (telex) or correspondence.

163. The characteristics of the system of special rapporteurs could be described under the following headings.

(a) Legal nature: the nature of a Special Rapporteur's work could be qualified as neither judicial nor accusatory, but rather political-humanitarian: to establish the facts and put forward recommendations for the (re)establishment of democracy and the rule of law. Initially special rapporteurs were mainly concerned with serious violations of human rights from a global perspective, without taking into account individual petitions, but as from the 1980s, individual cases were taken into account was well. The establishment of a Special Rapporteur was of a temporary nature and could be effected without the consent of the State concerned, although its cooperation was necessary for the effective fulfilment of his mandate. The legal framework for a special rapporteur's work was constituted by the Universal Declaration of Human Rights and international instruments in force.

(b) Appointment and composition: Working groups usually consist of five or six persons who were either experts or diplomats appointed in their individual capacity. Special rapporteurs, in a wider sense had different backgrounds, dependent on their mandate. One category of special rapporteurs was appointed by the Secretary-General. This category included the Secretary-General himself, his representative, his special representative, an expert or an independent expert appointed by him. The other category was appointed by the Commission on Human Rights. This category included special envoys, independent experts, special representatives and special rapporteurs.

(c) Shortcomings: the main question in this respect was to what extent special rapporteurs were subject to politization. First of all, his appointment and his mandate derived from a decision by a political body. Secondly, there was a certain degree of selectivity in the establishment of country mandates. Thirdly, often the expert experienced political pressure from the State covered by his mandate especially with regard to the extent of cooperation necessary for the fulfilment of his mandate. Furthermore, there were no rules for the actions of the Expert.

164. Finally, with regard to future perspectives, the expert mentioned several possibilities: first, to give the individual direct access to international judicial protection of his rights either through an amendment of the State of the International Court of Justice or through the establishment of an international penal tribunal; secondly, the expansion and improvement of current treaty-based quasi-judicial mechanisms; and thirdly, extra-conventional mechanisms could be improved. This could be achieved inter alia through the adoption of a set of rules applicable to all their activities, through a global mandate to rule out selectivity, through coordination by a "High Commissioner for Human Rights"; also, based on the current "urgent action" system one could think of an international remedy of amparo for humanitarian reasons. Another important element would be the strengthening of the Centre for Human Rights with regard to human and material resources.

165. During the discussion under this item, the opinion was given that by establishing thematic rapporteurs the international community had already accepted the idea of a "High Commissioner for Human Rights". The concept itself needed further elucidation. Attention was drawn to the necessity of expanding the Centre's funds for a smooth running of all mandates.

166. The idea was expressed that the time was ripe for the Centre for Human Rights to establish some sort of field presence in individual countries. In this connection, reference was made to the mechanism established in the Moscow doument. The CSCE might build on this mechanism and export its experience to other regions. A suggestion was made to appoint a special rapporteur in the field of childrens' rights since the Committee on the Rights of the Child did not have enough room for manoeuvre (Barcelona report, pp. 14-16).

167. The legal protection of basic human rights and freedoms at the international level began with the drafting of legally binding instruments after the adoption of the Universal Declaration. At the current stage there were eight instruments that provided for a supervision mechanism, constituting the United Nations treaty system. In all, these treaties received more than 700 ratifications or accessions. These eight instruments are the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, the Convention on the Rights of the Child, and the United Nations Convention on the Protection of the Rights of Migrant Workers and Members of their Family. Supervision is exercised through bodies composed of international experts with the following responsibilities: to receive and act upon inter-State complaints; to receive and act upon complaints from individuals; in the case of the Convention against Torture they might engage in a confidential enquiry; and most important of all, to monitor compliance through the consideration of State reports. With regard to the latter, the expert said that States submitted their reports periodically on the basis of guidelines elaborated by each of the treaty bodies. Reporting, in order to be meaningful, should be part of a continuing process of implementation, rather than a bureaucratic exercise. All committees sought to establish an ongoing constructive dialogue with each of the State parties, the content of which is published in the Committee's annual reports.

168. In elaborating on some of the treaties, attention was drawn to the definition of racial discrimination in the International Convention on the Elimination of All Forms of Racial Discrimination. Interestingly, the Human Rights Committee in its general comment on non-discrimination (No. 18(37)) extended its scope to cover other distinctions such as sex, language, religion, political or other opinion, social origin property and birth or other status. The foregoing might be of interest in the context of current discussions on the problem of the protection of minorities. Another point of interest is that the Convention on the Rights of the Child incorporates into a single treaty, for the first time, the whole spectrum of human rights, civil and political, economic, social and cultural. Those rights could be grouped

under three main headings: (1) fundamental rights and freedoms; (2) special protection from dangers to which children are particularly susceptible; and (3) those that sought to promote a child's proper development through access to basic necessities. In a number of areas the Convention went well beyond existing legal norms and practices and chartered entirely new territory.

169. Although all of these treaties were still far from universal acceptance and general implementation, the prospects for a favourable development of the treaty system were good, particularly since the practices prevailing in the Cold War were now a thing of the past. All committees had adopted a high public profile and an open attitude with regard to information from all possible sources.

170. The main issues focused on were the experiences of governments with the reporting; rationalization of the treaty-based system; and the extent of publicity given to the reporting system. With regard to the first of these issues, attention was drawn to general comments adopted by each of the Committees giving an authoritative interpretation of the provisions of instruments which could be of use in the preparation of reports to be submitted. A question raised was whether a State party could arrive at the situation of having fully implemented a convention. On the second of the issues under discussion, the view was expressed that a further streamlining could be achieved by having the Committees concentrate more on specific areas based on the previous reports, by computerization including the establishment of a database accessible by Governments, by uniformity in periodicity, and by increased cooperation between the expert bodies. The issues discussed could be taken up by the meeting of chairpersons of treaty-monitoring bodies. Finally, it was suggested that the reports and proceedings of committees be made generally available to interested groups in a country. However, this was not a treaty obligation, with the exception of the case of the Convention on the Rights of the Child (Barcelona report, pp. 17-19).

171. It was stated that the Human Rights Committee, charged with supervising the implementation of the Covenant, had three basic duties: examine reports submitted by States parties, consider inter-State communications; and deal with individual complaints under the Optional Protocol. The procedure under the first of these was aimed at establishing a constructive dialogue with the State representatives who preferably should not be diplomats. Over the years the dialogue had become more effective. The current practice was to single out the main issues, let the delegations reply to these issues first and subsequently to any additional questions. In contrast to the practice adopted in the Cold War period, questions asked nowadays were about specific points of legislation and/or practice. Moreover, information from NGOs was now taken extremely seriously. The outcome of the consideration of reports should now be that the Committee should give its views on the progress in implementation of the Covenant in general as well as with regard to specific countries to give the international community a clear view of the situation in this regard. The Committee felt the need to be able to respond to important developments occurring between submission of reports, for example in states of emergencies. One example was the case of Iraq, which was asked to submit a report on the implementation of the Covenant during the war.

172. With regard to the individual complaint mechanism, it was explained that communications were dealt with in two stages: the admissibility stage, and the consideration of the case on its merits. Efforts to speed up the procedure had resulted in the appointment of a special rapporteur to deal with new cases and a working group on admissibility, which may take a decision if unanimous; otherwise the decision on admissibility is taken by the Committee as a whole. The procedure with regard to the merits of the case is a written one, which may cause problems in case the State party does not cooperate. Recent developments in this regard include the appointment of a special rapporteur charged with follow-up of views adopted by the Committee in individual cases. States parties had the obligation to remedy violations in accordance with article 2 of the Covenant.

173. During the discussion the view was expressed that, although the use of information from NGOs was welcomed, there might be a risk of receiving one-sided information only. It was suggested that the individual complaints procedure might be partly conducted orally. Attention was drawn to the fact that the interpretation by the Committee of certain articles of the Covenant, notably the one on minorities (art. 27), might render States unwilling to ratify the Optional Protocol. Another item discussed was the possibility of different interpretations of the same case by the European Court and the Human Rights Court. The Committee however had shown and would show considerable caution in interpreting the Covenant (Barcelona report, pp. 19-20).

174. Freedom of movement and migration was elaborated on. The freedom of movement was essential in democratic societies and an important condition for development and economic and cultural cooperation. For those reasons, that freedom played an important role in the CSCE process. The expert highlighted some of the problems caused by migratory movement on Europe. The legal content of the freedom of movement could be described in three elements: (a) the freedom of movement within the territory of a State, which applied to all without distinction; (b) the right to leave any country, including one's own, which right equally applied to all with exceptions determined by law for reasons of national security, public order and public health and freedoms of others (note: this right was not coupled to a right to <u>enter</u> the country of one's choice); and (c) the right to enter or come back to one's own country, which might give rise to difficulties where nationality cannot be established. In conclusion, the right to be admitted to a given country did not exist. In view of the political aspirations of the European States, the time might be ripe to create a policy extending this right to individuals. In elaborating such a policy, a distinction should be made between an entry for a limited period and an entry with the aim of taking up permanent residence. The latter would remain within the prerogatives of the State. With regard to the first, attention was drawn to the fact that within the Council of Europe, all persons had the right to stay in a given country for a period not exceeding three months in the case of private matters. The extension of this right to the CSCE countries would constitute a considerable step forward.

175. The mobility of persons migrating made it difficult to classify in a legal sense. However, irrespective of the matter of legal classification, it seemed necessary that such persons were under some form of protection. Instruments providing such protection aimed at a regulated migration and

provided that governments should adopt measures, for example, to organize the return of migrant workers and members of their family to their country of origin. Another mechanism consisted in establishing a dialogue with countries of origin, aimed at regulating migratory flows as well as at creating economic and political conditions which would prevent new departures.

176. In conclusion, it was stated that in the field of human rights one should guard against incantatory formulas and premature satisfaction: a right enshrined in an instrument was to be implemented in full view of its relationship with the political aspirations of society. Secondly, traditional implementation mechanisms might not be sufficient; more concrete and pragmatic methods, adding to the supervision exercised by expert bodies, might be called for. Thirdly, the current notion and usage of the term "human rights" gave the impression that an individual had nothing but rights. In his view, it might be time to address the issue of the individual's responsibilities toward other individuals and society as a whole.

177. The point was raised what system - ILO, United Nations, or European - offered the best protection. In general, the European system offered the highest degree of protection. However, the protection offered by the United Nations Convention was more universal in geographical terms. Further, in connection with the protection of the national and cultural identity of migrant workers and their families, reference was made to the conclusions and recommendations adopted by the United Nations Seminar on Cultural Dialogues between the Countries of Origin and the Host Countries of Migrant Workers, held in Athens, Greece in September 1989 (Barcelona report, pp. 22-28).

178. It was stated that the membership of the Council of Europe was continuously expanding. The main criteria of admission were pluralist democracy, the rule of law, and the observance of human rights. The European human rights system consisted of 4 instruments and 10 protocols. Implementation mechanisms were the inter-State complaints mechanism (rarely applied) and the frequently invoked individual complaints mechanism. The European Conventions binding on Member States had had a far-reaching impact on domestic level. In most cases there was direct applicability, in some countries the European Convention had been given constitutional rank. The jurisprudence developed by the European Court in Strasbourg likewise had repercussions which went beyond individual cases. Furthermore, many decisions taken by the Committee of Ministers under article 54 had provoked numerous and substantial changes in domestic legislation. The number of cases presented in recent years before the Commission and the Court had increased to the extent that the system was becoming a victim of its own success. The complexity as well as the length of the proceedings was causing problems. Reform of the system was highly necessary. With regard to the European Social Charter steps had been taken to strengthen its control mechanism and amend some of its provisions. An additional protocol was underway including the possibility of bringing collective complaints. Referring to the European Convention on the Prevention of Torture, attention was drawn to the non-judicial preventive procedure whereby on-the-spot inspections could be held, which up till now had had remarkable results.

179. The Council of Europe also engaged in human rights education and information, and it was pointed out that there was but a loose connection between human rights education as such and intercultural education. The latter was an important element in the fight against the danger of populism and nationalism. Moreover, the Council of Europe provided countries in Central and Eastern Europe with cooperation and assistance to help them comply with European standards. In doing so, it tried to find flexible ad hoc arrangements in response to requests from Governments.

180. With regard to the CSCE Council of Europe relations, there existed the danger of "reinventing the wheel", which frequently resulted in standards which were actually below those elaborated in the European Convention; if the commitments undertaken in CSCE context were of a political rather than legal nature, they should aim at higher standards. The issue of minorities was being tackled by the Council of Europe through the draft Charter on Minority Languages, a draft additional protocol to the European Convention regarding minorities, and by suggestions to set up a machinery for dealing with minority problems. In conclusion, it was hoped that the activities of the Council of Europe would continue to expand in scope.

181. The possibility of an optional protocol on minorities to the European Convention on Human Rights was proposed and the necessity of increased cooperation between the United Nations, CSCE and Council of Europe to avoid duplication of activities was stressed. New problems to be tackled by each of these institutions were minorities and the disintegration of countries. Those problems should be solved through a step-by-step practical approach, wherein fact-finding, good offices and conciliation as well as confidence-building measures in the field could play an important role. With regard to possible standards in this area, there too a step-by-step approach was necessary: proceeding from a convention on minority languages to a protocol to the European Convention. There was also emphasis on the qualitative and quantitative successes of the European Court of Human Rights, which was such that it was threatened to become a victim of its own success. A normative or procedural solution should be found to counter this problem. Other issues discussed included the difficulties experienced by some countries in the process of ratification of the European Convention on Human Rights, the possible role of the European Parliament, and the relative shortcomings of the European Convention in the field of non-discrimination (Barcelona report, pp. 29-30.)

182. The existence of human rights institutions demonstrated a positive intention on behalf of the authorities to do something in the field. Furthermore, the often scattered information available did not allow observers to draw firm conclusions about the phenomenon. There were currently 30 such institutions.

183. Turning first to the status and independence of national institutions, it was mentioned that the independence of an international institution could manifest itself in their legal status, the quality of their instituting laws, their protection as well as their compositon and modalities of their functioning. Outside this scope were institutions such as parliamentary

institutions, the courts, non-governmental organizations and certain administrative institutions. The institutions under review generally had a general and permanent consultative competence in the field of human rights. Their independence was dependent inter alia on the hierarchical positon of the instituting law; national institutions set up under a constitution thus enjoyed the highest legree of independence. The establishment of an institution by law did not necessarily guarantee its independence, just as its establishment by the executive did not imply their dependence. With regard to the compositon of national institutions it was said that the membership ranged from 1,200 members to 5 members. Their appointment was often through co-optation, through a parliamentary procedure, or through a decision by the executive.

184. In reviewing national institutions around the world, one could elaborate several models of such institutions: first the model of independence by pluralism which was brought about by the diversity of members or the organizations they represented; secondly the model of authority by administrative origin, such as the Ombudsman. It was noted that often there was a link between independence and authority in the sense that the more the first was real, the second appeared to be less. In examining the domestic and/or international competence of international institutions, the task of national human rights institutions was to assure actively the enjoyment of human rights. In some countries those institutions were using international human rights instruments as a yardstick for evaluating the extent of human rights observance in their countries. In addition these institutions had the important task of informing the national public of negotiations on new instruments and ratification of existing instruments.

185. Referring to the role of national institutions vis-à-vis the State, most often national institutions were involved in ensuring human rights observance in the elaboration of legislation and sometimes could even take the initiative in recommending amendments to the law. Their competence could be either consultative or obligatory. In some cases institutions could be involved in designing transitory arrangements before the entry into force of new laws. In addition, some institutions could receive and process complaints from individuals. With regard to the latter, it was remarked that the conciliatory and flexible ways of dealing with complaints provided a very good means to fight discrimination of individuals. In other cases, national institutions could transmit cases submitted to them to the competent courts. Finally, attention was drawn to the recommendations adopted by the International Conference on National Institutions which was held in Paris from 7 to 9 October 1991.

186. Attention was drawn to the special position and powers of the Ombudsman, which was instituted by and linked to parliaments (Barcelona report, pp. 31-32).

187. The following views were expressed with regard to the nature and future of the CSCE standard-setting process. On the political level, it was pointed out that the CSCE process had departed from its original purposes, which consisted of a link between security and human rights. In the current political climate of cooperation there was still an important role for human

rights in the CSCE. Areas in which the CSCE process could still contribute were the problem of minorities, the disintegration of States, and economic cooperation. In general, there was a wide variety of views on the value of the standard-setting activities. In this field, the CSCE had made tangible process; to many the CSCE had become the symbol for human rights in Europe. However, attention should be paid to the risk of a dilution of standards. Standard-setting in the CSCE might very well have reached the end of the road. The Helsinki follow-up meeting should therefore focus on implementation and on important remaining issues, such as the issue of minorities. NGO's should be permitted to provide an important input into the CSCE process.

188. CSCE standards had been modelled on United Nations rather than European standards. In other words, the original legal commitments had been transformed into political commitments, which was a rather unusual procedure, because treaties were the most tangible and hierarchically most important expression of the political commitment. However, the distinction between a legal and a political commitment was of a limited validity in the case of the CSCE, because no State would consider acting in contravention of political commitments undertaken in the CSCE process. The main difference lay in the parliamentary control with regard to legally binding treaties.

189. Most of the CSCE documents were of limited usefulness as legal documents: they had been drafted rather hastily and were structured along sketchy lines. Furthermore, the level of protection offered by the CSCE documents was lower than that offered by the United Nations and European human rights instruments.

190. With regard to the CSCE implementation mechanisms, it was expressed that the CSCE process, which was essentially of a political character, has helped to fill the gap of State-to-State contacts in the field of human rights. The Helsinki follow-up meeting would open a new chapter of human rights cooperation by strengthening implementation mechanism. The view was expressed that the United States and Canada might not be in a situation to be fully included in the developing system for political and constitutional reasons. In the United States the issue of adherence to international human rights instruments was given high priority.

191. On the interrelationship between the United Nations, CSCE and Council of Europe in the field of human rights the view was expressed that the current situation could be described using three concentric circles. The inner circle was formed by the Council of Europe, in which there was a very high degree of political, cultural and legal homogeneity. The Council of Europe offered the most sophisticated system of protection. The middle circle was formed by the CSCE process, which was essentially political in character and offered the important advantage of linking Europe to Asia and America. In the long run, there might be a geographical coincidence of these two circles. The outer circle was formed by the United Nations system, which was of a universal character incorporating many different cultures. This outer circle itself contained many different substructures.

192. Each of those structures was serving the identical purpose of promoting and protecting human rights. However, efforts should be made to avoid overlapping of these three circles. There was also a risk that regional

structures might endanger the concept of universality of human rights, especially with regard to standards. The CSCE might provide interesting examples of implementation mechanisms, such as the mechanism elaborated in the Moscow document which can be put to use in the context of the United Nations. Other examples might be found in the elaboration of early-warning and technical-cooperation systems. The view was expressed that the activities in each of these fields were mutually reinforcing and that there was scope for conceptual influence, coordination and collaboration between each of the three circles. The choice of forum was essentially dependent on the issue at stake. The minorities issue was considered not to be ripe for a legally binding instrument: the CSCE was well equipped to deal with the issue at the political level; the Council of Europe was to focus on legal instruments.

193. Another view expressed with regard to this interrelationship was that the main role of the CSCE had not been the elaboration of new standards, but rather to enlarge the circle of States accepting a western interpretation of existing standards as elaborated in the International Covenant on Civil and Political Rights. There was already a considerable overlap with regard to applicable rules: the task ahead was to have one interpretation of these rules to be accepted throughout the three concentric circles. The existence of a plurality of implementation mechanisms was considered not to be a bad thing in itself; in fact it might even contribute to better protection through application and interpretation of standards. There was little risk that different interpretations would be arrived at in the different systems, notably by the European Court for Human Rights and the Human Rights Committee. It was important to establish forms of coordination between implementing bodies. Furthermore, the importance was underscored of not allowing the European systems to create too great a gap between Europe and the other continents: instead efforts should be directed to bridge the gap. In this context, a suggestion was made that the CSCE-countries develop a common position vis-à-vis the rest of the world. Other suggestions made were to strengthen the existing consultation and cooperation between those bodies at both the political as well as the executive level, and to make sure that the World Conference on Human Rights in 1993 would be made fully aware of regional structures in Europe and elsewhere (Barcelona report, pp. 35-37).

194. The CSCE procedure for the continuous monitoring of the human rights dimension of the CSCE involved a four-stage procedure: (a) the exchange of information and response to requests and representations; (b) holding bilateral meetings concerning both "situations" and "cases" with a view to resolving them; (c) drawing the attention of other participating States to those situations and cases; and (d) bringing the matter to one of the three main human rights conferences, Paris 1989, Copenhagen 1990 and Moscow 1991, as well as to the CSCE Follow-up Meeting in Helsinki in 1992. The possibility that the political changes in Europe might create ethnic tensions and conflicts, gave rise to the conviction that the question of national minorities should be solved in a democratic political framework based on the rule of law, with a functioning independent judiciary. Where necessary, States would adopt special legislative and administrative measures ensuring to persons belonging to minorities not only full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms, but also guarantees for the preservation and protection of their national,

religious and cultural identity. To this end, the participationg States would cooperate closely in international organizations, notably the United Nations, the Council of Europe, and the CSCE, bearing in mind their ongoing work with respect to questions relating to national minorities.

195. The relevant provisions and elements in the "Charter of Paris" were referred to the work done and the relevant discussions held at the meeting of experts on national minorities held in Geneva. During the latter meeting, it was declared that issues concerning national minorities were of legitimate international concern and consequently did not constitute exclusively an internal affair of the respective State. The work and activities of the United Nations and the Council of Europe would be of continuing relevance to the CSCE's consideration of national minorities issues. The outcome of the Moscow meeting was summarized and attention drawn to the implementation mechanisms elaborated during that meeting.

196. In conclusion, new and creative thinking was called for, both in the analysis of the problems involved, in the protection of persons belonging to minorities and in the development of viable and politically feasible solutions. The experience of the inter-war period should be re-evaluated in the light of present day requirements.

197. The view was expressed that the minority issue evaded easy solutions and that caution was called for in the elaboration of standards. Agreement was expressed with the proposal that standards would go beyond non-discrimination and would proscribe positive discrimination when the situation of a certain minority necessitated such action in accordance with the United Nations draft declaration on the rights of national minorities. Furthermore, the suggestion was put forward to elaborate standards at two levels: a general level containing provisions for the protection of minorities' rights applicable to all States, and a bilateral level at which the protection of specific minorities would be left to negotiations between the States concerned. At the general level the CSCE provisions and mechanisms might be helpful in finding practical solutions to the problem, consisting of the elaboration of models applicable to particular situations in Europe based on the pertinent United Nations standards. With regard to the bilateral level, attention was drawn to the interbellum period, during which treaties were concluded which should be respected and applied. In some situations, a unilateral commitment to respect the rights of a given minority might be sufficient (e.g. the Aaland Islands).

198. The time was not considered ripe for a legal solution, especially when existing instruments offered sufficient protection. In most cases minority problems could be solved through observance of general human rights applicable to the individual and the specific rule in article 27 of the International Covenant on Civil and Political Rights. The matter of finding a suitable definition of minorities might better be evaded in view of possible dangers: a definition might create minorities where previously there were none. Furthermore, there might be a conflict of interest between an individual and the minority to which he or she belonged. The question should be phrased in terms of the rights to be protected.

199. It was stressed that discrimination of minorities was particularly tangible where the situation of children was concerned: infant mortality rates and the occurrence of malnutrition were higher for minorities. UNICEF engaged in promoting education in the field of human rights, especially children's rights as well as in studies at the regional level. One example cited was the study undertaken on the situation on the younger population of gypsies in Central and Eastern Europe.

200. Attention was drawn to the Nuuk (Greeland) meeting on indigenous populations, preparations for the 1993 Year of Indigenous Populations by the ILO and the United Nations Working Group on Indigenous Populations and to proposals submitted by the Scandinavian countries and Canada to the Moscow meeting on the rights of the indigenous populations, which would hopefully be re-submitted in Helsinki.

201. With regard to implementation machinery, it was stated that state initiated action, as introduced in the CSCE Vienna document, might very well increase political tension in the case where a minority is another State's majority. A possible "sui generis" solution would provide minorities with the possibility to bring their case before a non-judicial non-governmental body, whether in United Nations or CSCE context, to examine facts, to monitor human rights compliance, offer mediation and engage in conciliations as well as provide advisory services. It was suggested that the United Nations and the Council of Europe work together to establish a programme of advisory services available at short-term notice to solve problems with regard to the protection of minorities' rights. The current programme of advisory service could be expanded. Moreover, it might be useful to nominate a United Nations special rapporteur or working group to deal with the issue. Also, better use could be made of the machinery available under the Optional Protocol to the International Covenant on Civil and Poitical Rights and the International Convention on the Elimination of Racial Discrimination (Barcelona report, pp. 38-40).

202. The problem focused on the growing groups of persons - refugees and internally displaced persons - who fell outside the scope of the 1951 Convention, but nevertheless needed protection on humanitarian grounds. The current individual approach by European Governments should give way to a common approach to be elaborated in a CSCE context. In many European States, the asylum mechanism was frequently invoked in the absence of a coherent immigration policy. As a consequence, that mechanism had become overheated and discredited. No clear policies existed with regard to people who emigrated for economic reasons, which in itself was a nebulous concept. He called upon European countries to deal with that issue as well as with the question of minorities, since many refugees belong to an insufficiently protected minority in their country of origin (Barcelona report, p. 41).

203. It was explained that in the Covenant on Economic, Social and Cultural Rights no specific reference was made to minorities and migrant workers but that individuals in those and other vulnerable groups were covered by the general provision on non-discrimination in article 2(2) of the Covenant. Similarly, the reporting guidelines established by the Committee did not make

reference to minorities but rather to especially vulnerable groups and their enjoyment of economic social and cultural rights. However, at many occasions during the consideration of reports submitted by States parties, the members of the Committee had asked specific questions about minorities and their enjoyment of economic, social and cultural rights.

204. With regard to migrant workers, article 2(2) and 2(3) of the Covenant which provided for equal protection of nationals and non-nationals. The members of the Committee regularly asked specific questions about migrant workers during the examination of States parties' reports. The critical situation of refugees was taken into consideration by the Committee in the course of examination of reports from States parties which harboured many refugees within their borders. Finally, it was suggested that the realization of economic, social and cultural rights was not just a matter of economic resources but also of a positive attitude and required a constant vigil against xenophobia, fanaticism and egoistic attitude.

205. In the discussion on minorities and migrant workers, attention was drawn to the relation between the level of observance of human rights and refugee flows. There was a clear need for the CSCE to put the issue on the agenda or otherwise engage in international coordination. In finding solutions to the problem, it was necessary to distinguish between the underlying causes of migratory flows. The Centre for Human Rights and UNHCR could not afford not to cooperate in this field: the Centre might very well provide early warnings, while UNHCR could put the reactive mechanism into action. Cooperation in this regard was now especially tangible in the field and in technical cooperation, but more could be done, for example by instituting a standing committee. It was also said that Europe could not afford to isolate itself from the rest of the world and to ignore the situation of peoples around the globe, both with regard to human rights and to economic development. Furthermore, attention was drawn to the need to create a mechanism for internally displaced persons and States were called upon to become parties to the Convention on Migrant Workers and their Families (Barcelona report, pp. 41-42).

206. There is a substantial need for increased coordination between the Council of Europe, the CSCE and the United Nations at both the political level as well as the executive level (Barcelona report, p. 43).

207. In this regard, the establishment of a United Nations special rapporteur or working group to deal with minority issues should be given serious consideration. In a European context, there is scope for cooperation between the United Nations and the Council of Europe in designing a programme of technical cooperation to assist Governments and minorities (Barcelona report, p. 43).

208. Further thought should be given to establish a system of early warning of human rights violations, e.g. by creating a string of field offices of the United Nations Centre for Human Rights. This "early warning" arm of the United Nations might be supplemented by a "reactive" arm of UNHCR (Barcelona report, p. 44).

Objective 6: "To make recommendations for ensuring the necessary financial and other resources for United Nations activities in the promotion and protection of human rights and fundamental freedoms" (resolution 45/155, para. 1 (f))

209. The desire to establish and anchor human rights in all aspects of the work of the United Nations system, in accordance with the purposes of the Organization as laid down in its Charter, was repeatedly brought up during the session and is reflected below in connection with several themes. The effective integration of human rights in a new world order, based on universality and objectivity, will be a measure of the success of the World Conference (Iceland report, para. 14).

210. Actual and potential situations of ethnic conflict call for new, or rather complimentary, approaches to the rights of minorities and indigenous peoples. Reconciliation, the establishment of national dialogue and confidence-building measures within and between States should be explored in particular. Participation in national dialogue and in the relevant international work by persons belonging to and democratically chosen by these groups is essential for reasons of both equal enjoyment of rights and freedoms and the success of the suggested approaches. The openness of the United Nations Working Group on Indigenous Populations provides a good example of how popular participation can bring about dialogue and education in this respect (Iceland report, para. 39).

211. Substantive progress made at the regional level at the Vienna, Copenhagen and Paris meetings of the Conference on Security and Cooperation in Europe (CSCE) was welcomed as a possible model for expanding the international supervision of minority and indigenous rights. Systematic reporting by both States and the groups could be the first step towards an international monitoring mechanism (Iceland report, para. 40).

212. The results emerging from other international projects could be helpful to the World Conference in discussing ethnic conflict resolution. These projects include, first, the study under way in the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the multitude of successful national arrangements which could be translated into international standards and, second, an upcoming United Nations meeting of experts on self-government for indigenous peoples to be held in Kalaallit Nunaat, Greenland, in September of this year (Iceland report, para. 41).

213. The World Conference and the International Year for the World's Indigenous Peoples coincide in 1993. The Conference cannot ignore the Year and must address indigenous peoples' rights in substantive and not merely symbolic terms. The suggestion made in Commission on Human Rights resolution 1991/57 on the International Year, calling for an emphasis on technical assistance by the international community to indigenous peoples, should meet with positive reaction (Iceland report, para. 42).

214. Reference was made to the ongoing study of the Sub-Commission on the possible relationship between the environment and human rights. Human rights aspects of the environmental debate include popular and political

participation, the right to be informed about the state of the environment and measures under way, the right to health, the rights of indigenous peoples, and remedies to those negatively affected (Iceland report, para. 43).

215. Certain human rights issues have come up in the deliberations and documents of the Preparatory Committee for the United Nations Conference on Environment and Development (UNCED) and are likely to be carried through to that Conference. The Preparatory Committee for the 1993 Conference should take these developments into account to the degree relevant to its mandate (Iceland report, para. 44).

216. In this connection, it was suggested that the research reports of special rapporteurs appointed by the Sub-Commission, with their conclusions and recommendations made over the years, should be systematically consulted by the Preparatory Committee of the World Conference in order to draw on the wisdom of the Sub-Commission as the think-tank of the human rights programme (Iceland report, para. 45).

217. The establishment of an international court of human rights with comparison to existing regional courts was brought up as a possibility. The view was also expressed that enhanced acceptance of and powers for the treaty-based bodies which already employ quasi-judicial procedures could equally well, at least for the time being, fill the functions of a judiciary in the field of human rights (Iceland report, para. 69).

218. The idea of establishing an international criminal court should be seen in the light of ongoing drafting work by the International Law Commission on a code of offences against the peace and security of mankind and on the Commission's proposals about an enforcement mechanism for the code. The issue could be taken up by the World Conference (Iceland report, para. 70).

219. Effective coordination and cooperation in the human rights field are the subject of several observations in the present report. The rights of the child provide an example. In addition to the new Convention on the Rights of the Child and the expert committee set up to monitor compliance with that Convention, a number of other experts and organs, as well as practically all the implementation procedures, have a say on rights issues affecting children. The Special Rapporteur of the Commission on Human Rights concerned with the sale of children, the Sub-Commission's Working Group on Contemporary Forms of Slavery, UNICEF, ILO and UNESCO have specific mandates. It is imperative that all of these general and specific instances be brought together in a constructive way (Iceland report, para. 79).

220. The role of the Centre for Human Rights as a focal point of coordination for human rights activities within the secretariat and between the various organs and specialized agencies should be spelled out even more clearly than is the case in existing resolutions on the subject (Iceland report, para. 80).

221. A United Nations human rights institute, affiliated with or linked to the Centre, could be set up to maintain an overview of human rights research which has been or is being carried out within the United Nations system; to coordinate ongoing research and standard-setting work; to implement the Human

Rights Fellowship Programme and to link the Fellows' research and writing contributions to actual work and activities undertaken within the United Nations system; to draft and to publish human rights teaching materials for use in schools and universities, as well as training manuals for use in courses and workshops provided by the United Nations system; to maintain links with academic and research institutions at the national and regional levels and to facilitate and to encourage cooperation between them and the intergovernmental organizations; and to make sure that information flows to all the organizations concerned about the varied activities under way (Iceland report, para. 81).

222. Substantive issues such as the rights of women, the administration of criminal justice and the treatment of offenders should be better integrated into and coordinated with the mainstream human rights agenda. Similar considerations may apply to some activities now taken care of by the Office of the High Commissioner for Refugees (Iceland report, para. 82).

223. The head of the Centre for Human Rights should be given a mandate to initiate discussions and enter into cooperative arrangements with Governments about trouble spots, with an emphasis on prevention and good offices, aiming primarily at dialogue, mediation and the offering of technical assistance (Iceland report, para. 83).

224. In regard to mandates or functions which go beyond the servicing of meetings, it does not matter whether the post at the head of the Centre is called Human Rights Commissioner, High Commissioner for Human Rights or Under-Secretary-General for Human Rights. Earlier proposals and debates concerning the establishment of a high commissioner's post should be examined in the light of the need for a strengthened role for the secretariat (Iceland report, para. 84).

225. It remains incomprehensible to the participants in the Session that the Centre has so far not been granted the resources necessary to acquire modern technology for efficiently processing the thousands of reports and hundreds of thousands of communications which it receives annually. The fact that most other departments and agencies within the United Nations system have entered the modern age was noted (Iceland report, para. 85).

226. In order to guarantee the coordinated and effective flow of information and in addition to the current staffing structure based mainly on thematic officers, the Centre should employ country and/or regional officers who would systematically collect and distribute all relevant information to the organs and experts concerned. This observation applies to and would facilitate the general human rights debate, standard-setting exercises, implementation activities and technical cooperation. To this end also, the Centre should be adequately computerized and have access to external databases (Iceland report, para. 86).

227. The World Conference should consider not only the United Nations human rights programme but also the policies and projects of the specialized agencies, United Nations organs and other intergovernmental organizations working in the fields of human rights and development. While appreciating the

competitiveness of the various international organizations active in these or related fields, improved coordination of the work of these organizations, relating to division of labour and cooperation, is desirable for reasons of both effectiveness and efficiency (Iceland report, para. 87).

228. The specialized agencies and other United Nations organs should actively contribute to the Conference, its Preparatory Committee and other preparatory meetings of a regional or non-governmental character. Such participation should go beyond the formal part of making statements from the floor and extend to a substantive and integral role in the preparatory process of the secretariat (Iceland report, para. 88).

229. The remarks made in the two preceding paragraphs apply equally to regional organizations active in the field of human rights. The secretariats of the international and regional organizations would gain from additional contacts. The chairmen of the African, European and Inter-American commissions and courts, as well as those of treaty organs administered by the specialized agencies, could be invited to attend the meetings of chairmen of the United Nations treaty-based bodies (Iceland report, para. 89).

230. Independent non-governmental organizations are crucial to the United Nations human rights programme in all its aspects: standard-setting, implementation methods, and promotional activities. Several references have been made above to desirable input by these organizations in the different sectors of human rights work (Iceland report, para. 90).

231. Non-governmental organizations should have a role to play in the Preparatory Committee and in the World Conference itself, but their contribution to the preparatory process by early development and expression of their demands and desires would be especially important. They should proceed wth influencing and lobbying Governments to this end, not least at the national level, as soon as possible. Furthermore, promotional activities or a parallel (but not an alternative) conference undertaken by the non-governmental community would be helpful in disseminating information about and generating interest in human rights in general and the Conference in particular (Iceland report, para. 91).

232. It would be desirable if national delegations to the Preparatory Committee and to the Conference itself were to include members of the independent non-governmental community. It was also deemed desirable that national committees of all parties interested and involved in human rights work should be set up in order to formulate suggestions and programmes for the Committee and the Conference (Iceland report, para. 92).

233. The role of the minority issue in current international developments was highlighted and the difference between the protection of minorities distinguished from the right to self-determination. For the moment, no accepted definition of minority existed. Indigenous peoples were generally considered not to be a minority. The politcal context of the minority issue was primarily an issue of State formation: "nation-building" versus "nation-restoration". The choice between these approaches was dependent on context and recent political experience. Current efforts in the human rights

field within the United Nations include the elaboration of a draft declaration on the rights of minorities and a study on peaceful and constructive ways of handling situations. Within the Council of Europe steps were taken towards a convention on the protection of minorities as well as a Charter on minority languages. Both the Copenhagen and Geneva meetings of the CSCE conference provide examples of how this political entity dealt with the issue. The evolution of minority protection, starting with religious concern and then evolving with nationalism, Central and East European developments, the League of Nations period, the post-war focus on individual rights and the current emphasis on the rights of peoples to self-determination were elaborated upon. In current efforts to deal with the issue of minority, one could distinguish a ladder of responses to the great diversity of situations. The ladder would range from the basic protection of the rights to life (prohibition of genocide) to the exercise of full sovereignty by a minority. After briefly touching upon the issue of nationality and statelessness, the necessity of establishing both national and international, formal and informal procedures to resolve conflicts arising from the existence of minorities was advocated. In this regard, attention was drawn to the CSCE special mechanism, the projected approach of the European Charter and possibilities for United Nations action in this field after adoption of the Declaration on the Rights of Minorities. In conclusion, there was a need to address the issue without unconstrained endorsement of the stronger demands by minorities or ethnic groups. The core of any solution must be respect for basic individual rights. In violent conflicts, it was essential that as a minimum humanitarian standards are applied. The standard of non-discrimination could, if applied properly, solve many a problem. Rights should be given in measures applicable to the situation (functionally designed), to be clarified according to a peaceful procedure. Domestic remedies should be made available to ensure that given rights are complied with. Finally, there should be established international procedures for the finding of adequate solutions as well as for the monitoring of the implementation of given rights.

234. It was stressed that indeed for many purposes there was a significant distinction between indigenous peoples and minorities. With regard to the problem of creating group rights, it was stated first of all that this issue should be demystified and, secondly, that some problems could be easily dealt with by considering group rights when looked at on an issue-by-issue basis. The difference in approach between the United Nations, the CSCE and the Council of Europe was that the United Nations was in a position to clarify a wide range of problems on a global scale through mechanisms such as a Working Group, the CSCE was well placed to develop political commitments in the field as well as creating mechanisms such as the roster of experts agreed upon during the Moscow meeting, while the Council of Europe would develop a legal platform to work on. Minorities should also be reminded of their obligations vis-à-vis the States in which they live. Often the protagonists in an ethnic conflict lost sight of possible options, which might be brought back into focus by external independent experts. A brief discussion was held on the efforts undertaken in the field of minorities during the League of Nations period. It was pointed out that some of the arrangements made during that period were still in force, e.g. the Treaty of Lausanne. The failure of these arrangements was due to their weak application and political developments including increasing populism (Barcelona report, pp. 9-11).

235. It was explained that the number of refugees both in Europe and worldwide had increased exponentially. The question of refugees in Europe, coming both from within Europe and from outside, would have to be placed on the political agenda. It was pointed out that the 1951 Convention provided only a very narrow scope for the tackling of the current refugee problem. UNHCR was therefore taking on projects in countries of origin as well as in countries of asylum, not only with regard to refugees stricto sensu, but also with regard to internally displaced persons as well as refugees for reasons of survival. The latter categories obviously require some form of protection, which in practice is given. In a number of these projects UNHCR cooperated with the Centre for Human Rights. In Europe there was a clear need for establishing a legal and political basis to deal with the refugee problem. The CSCE process could prove to be of essential importance in this matter (Barcelona report, p. 11).

23ö. The World Congress on Human Rights,

1. Urges Governments to ratify the Convention on Elimination of All Forms of Discrimination against Women and to establish commissions to monitor compliance with it;

2. Further urges Governments of countries which have entered reservations to the Convention to withdraw those reservations and to change their laws to the extent necessary;

3. Calls upon Governments and the media to disseminate freely information dealing with human rights especially those of women and to take action at every level of society with a view to changing attitudes which may result in discrimination against women and girls;

4. Condemns all forms of gender discrimination, including discrimination in respect of the right to be born;

5. Suggests legislative and other measures to ensure that no person who tends or medically examines any pregnant woman shall reveal any information, either to the woman herself or to any other person, which might indicate the sex of the unborn child;

6. Considers it imperative to eliminate gender discrimination in respect of education, and calls for steps to ensure that education should be universal, free and compulsory for both female and male children at least up to the age of 16;

7. Recommends that national laws be examined and revised in order to remove discrimination in the areas of: (a) marriage, (b) inheritance, (c) matrimonial property, (d) matrimonial relations and (e) adoption and guardianship;

8. Further recommends the establishment of Family Courts based on the following principles: (a) simplified laws and procedures, (b) privacy of hearings, (c) policy of appointing family court judges in equal gender proportions and (d) providing counselling and mediation services as part of the court process;

9. Calls upon all Governments to take immediate steps to ensure that all discriminatory laws, regulations and regulatory procedures which restrict the movement of women within a country and which restrict the right of women to travel outside their country should be repealed;

10. Suggests that an attempt should be made so that future World Congresses may have 50 per cent women, as participants and keynote speakers;

11. Requests that this Final Act be circulated to all appropriate bodies, including: (a) United Nations Branch for the Advancement of Women of the Centre for Social Development and Humanitarian Affairs, Vienna; (b) United Nations Commission on the Status of Women; and (c) Governments and the media (New Delhi, Final Act, part V).

237. The World Congress on Human Rights,

1. Considers that:

(a) the phrase "ethnic, social and religious conflict" is often a misnomer and leads to false perception and that such conflicts are variably cited by politicians manipulating the situation to obtain power and to control resources;

(b) tensions between communities largely emanate on the question of control of resources and are heightened by depressed economic situations and economic dislocations; they are not essentially conflict between doctrines of religions but more between people, who happen to belong to a religion, and often only a small section of this community is in conflict;

(c) rise of authoritarianism in response to political and economic challenges is often associated with the abuse of power by dominant ethnic majority and expresses itself in its most blatant way through the excesses of military and law enforcement authorities identified with the ethnic majority;

(d) furthermore, the strong identification of State with religion and culture of the majority leads to alienation of the minorities; as a result, the religious minorities tend to become "exclusivist" which, in turn, escalates conflicts and inhibits dialogue; and

(e) minorities are often marginalized by those in power and that minorities could be defined as a group of people, including women, who are without any share in power and that definitions and their interpretations change in the context of changing and existing social and economic environments in a given situation and there is a continuing need for renewal;

2. Emphasizes that:

(a) the need to resolve conflicts peacefully requires much more effort, including the early analyses of the factors leading to marginalization of groups and that it is important for each community to recognize its responsibilities to other communities;

(b) the State and its centralized structural framework has limitations in finding solutions; hence the crucial issue is the devolution of power both structurally and geographically, and the granting of autonomy in many areas while respecting the integrity of the State;

(c) organizations both non-governmental and intergovernmental, especially the United Nations, as well as national Governments have a crucial role to play in promoting research, dissemination of information providing objective views and in bringing communities together;

3. Reaffirms that the United Nations has a crucial role in seeking peaceful solutions to conflict and injustice, and recognizes that violent conflicts involving minorities are a major cause of insecurity and disharmony in the world;

4. Urges the United Nations and its member States to recognize the importance of this issue and to seek positive remedies by:

(a) adopting a declaration on "The Rights of Persons to Belong to National, Ethnic, Religious or Linguistic Minorities", as a matter of immediate urgency. A United Nations convention on religious intolerance may also help enhance the rights of minorities;

(b) member States responding fully and speedily to the urgent requests of the United Nations Sub-Commission on the Protection of Minorities and the Prevention of Discrimination as also urgent requests for information on minorities. States should thereafter submit regular reports on their conditions and policies relating to minorities;

(c) seeking new forums to bring together member States and minorities to find constructive responses to minority issues. In this connection the role of the United Nations General Assembly as an avenue for the consideration of these issues should be greatly enhanced, for example, by permanent reference to the Third or Fourth Committees; and

(d) ensuring that the situation of minorities is made a substantial item on the United Nations Conference on Human Rights, to be held in 1993, reviewing the work of the United Nations in the field of human rights, and that non-governmental organizations (including minority communities) are consulted and involved;

5. Recognizes and welcomes the constructive steps taken by Governments in the promotion of dialogues with their minorities and in redressing problem areas. It also recognizes and regrets that some Governments and politicians have ignored or exploited majority-minority differences;

6. Appeals to all Governments to recognize that problems do exist and the need for positive measures to facilitate just and peaceful solutions. These include:

(a) encouraging independent research and analysis of the root causes of conflicts by researchers and non-governmental organizations;

(b) open, impartial and constructive analysis of evidence brought to the attention of Governments, researchers and non-governmental organizations, where possible, together;

(c) the allocation of additional resources to redress injustices in the situation of minority communities and to promote inter-community harmony. This will involve a particular responsibility for donor countries to support initiatives (either bilaterally or multilaterally) of governmental and non-governmental bodies to promote community and inter-community harmony;

(d) the development of regional forums in all regions, where possible, incorporated into international law through a convention, which monitors human and minority rights, and can exercise jurisdiction in relation to individual or group petitions; and

(e) the creation of new institutional bodies - locally, nationally and regionally - to consider and respond to the needs of minorities;

7. Reiterates that non-governmental organizations, particularly those operating at the local and national levels, could play an important role in the resolution of ethnic, social and religious conflicts and calls upon such non-governmental organizations to:

(a) reflect on and review their policies towards minorities;

(b) consider new programmes of action for minorities to resolve injustices and seek peaceful solutions;

(c) identify models of good practice and promote and publicize those experiences;

(d) maintain a dialogue with each other - locally, nationally and internationally - in order to promote understanding and cooperation, especially through issues which transcend ethnic boundaries (for example, the environment);

(e) explore and develop new ways of enabling communities to share power equitably, and to seek the peaceful resolution of conflicts;

(f) develop a continuing programme involving research and the publication of reports, both on the conditions of minorities and on ways of promoting peaceful and just solutions to conflicts; and

(g) direct their activities to persuade Governments to adopt the proposals made at this Congress (New Delhi, Final Act, part VI).

238. The World Congress on Human Rights,

1. Recognizes that the term "refugee" as defined in the 1951 Convention/1967 Protocol ought to be complemented in accordance with the wording of the 1969 OAU Refugee Convention and the 1984 Cartagena Declaration in order to protect persons leaving their country of origin for reasons of

international or non-international armed conflicts, foreign aggression, internal disorder or similar events. In the meantime, it calls for further accessions to the 1951 Convention/1967 Protocol and other regional instruments;

2. Stresses that the practice with regard to refugee determination had become more restrictive in developed countries during the past few years which, in particular, affected asylum seekers from the Third World. In view of the international character of the refugee problem and the fact that a solution is the responsibility of all States, it calls upon the developed countries to accept more asylum seekers, either those arriving spontaneously or under special resettlement schemes;

3. Notes the precarious situation under which internally displaced persons are living and the fact that this category of persons cannot be assisted by the United Nations High Commissioner for Refugees (UNHCR) as they are outside the mandate of the Office; therefore, it calls upon the international community to establish a legal basis for assistance of this group by humanitarian organizations;

4. Believes that an integrated approach to the refugee problem requires addressing the problem of causes of new flows of refugees. In this context, it stresses the urgent need to reform North-South economic relations and to take steps towards establishing a new international humanitarian order;

5. Underlines the importance of establishing an "early warning system" and participating in current United Nations efforts to coordinate such systems. Recognizing the need for measures relating to preventive actions for the avoidance of refugee flows, it urges that any preventive actions in this regard should conform with the Statutes of the UNHCR. It further recommends information-sharing on country conditions;

6. Emphasizes the need to respect the principle of non-refoulement, including non-rejection at the frontier for all asylum seekers, as also the need to safeguard their access to a refugee determination procedure;

7. Stresses the voluntary character of repatriation of refugees. In this regard, it underlines the principle of the right to leave any country, including one's own country (Universal Declaration of Human Rights, art. 13, para. 2) and deplores that some countries openly violate that principle. It recommends that guidelines on repatriation should define clearly the responsibility of the country of origin, i.e. development aid and human rights observances - an aspect that includes economic, social and cultural rights as well as civil and political rights;

8. Recommends that the international community should decide how to deal with cases where an asylum seeker has been refused refugee status. In some countries a negative decision leads to the forcible deportation to the country of origin, while in others rejectees are kept in camps, or allowed to stay in one way or another. It urges that those determined not to be refugees should enjoy the protection afforded by the Universal Declaration of Human Rights;

9. Underlines the deplorable situation of Human Rights; persons who are not refugees. In this context, it draws attention to several measures such as a survey of the extent of statelessness worldwide, collection and dissemination of information on national law and practices, review of the lawfulness of deprivation of citizenship and mandating an international agency for the effective protection of the rights of stateless persons. With regard to refugees who are also stateless, it recommends that countries of asylum should take responsibility to avoid situations of statelessness. As well, those returned to countries of origin should enjoy the same guarantees. Also, it urges States to accede to the 1954 Convention relating to the status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;

10. Deplores the overall cuts to the UNHCR's budget. It calls for consideration to be given to re-evaluation of the emergency assistance structure of UNHCR. In this respect, more effective management and planning could be developed without the constraints imposed by the yearly need to approach States for funding. Finally, it urges that efforts be made to put the question of forced migration on the international agenda (New Delhi, Final Act, part VII).

239. The World Congress on Human Rights,

1. Calls upon all States:

(a) to ratify the Convention on the Rights of the Child and all related international instruments, and fully and immediately implement them;

(b) to abolish child labour in all its forms in a phased manner and pending the attainment of this objective, to take immediate steps to improve their working conditions; and

(c) to prohibit by law, and enforce such law, the employment of children in work which endangers their health, safety and morals;

2. Condemns child slavery in all its forms wherever it is practised and calls for immediate intervention of concerned international organizations and Governments to put an end to this practice;

3. Urges all States to take effective steps to end the practice of sale of human beings and to punish both the sellers and buyers engaged in the trade;

4. Notes with distress and alarm that increasing numbers of children are incarcerated in inhuman and cruel prison environments in violation of international human rights covenants and constitutional guarantees and calls upon all States which have incarcerated children in jail, especially those detained for trial, to release them forthwith and to provide appropriate rehabilitation and adequate compensation to those children or their families;

5. Notes with distress that disabled persons are denied their rightful place in society, neglected and socially and economically marginalized, and recommends:

(a) that a mechanism for the protection of the rights of disabled persons should be established;

(b) that universal access to preventive actions and disability prevention should be incorporated as an integral and high priority component in national socio-economic policies and development plans;

(c) that efforts should be made for the creation of general awareness at the grass-roots level about the prevention of disability as well as the rights of disabled persons; and

(d) that home-based care and rehabilitation should be encouraged to the disabled, but where this is not possible they should be provided with institutional care and rehabilitation services;

6. Notes with deep concern that little has been done to resolve the problems of migrant workers;

7. Urges intensified efforts, both at national and international levels, towards appropriate action programme and its speedy implementation of the rights of migrant workers;

8. Expresses distress over the perpetuation of the practice of bonded labour, despite extensive national legislation and international measures seeking its elimination;

9. Demands more vigorous efforts for elimination of this form of social injustice;

10. Calls upon non-governmental and intergovernmental organizations as also Governments:

(a) to identify the disadvantaged sections of society and their particular needs;

(b) to adopt effective action programmes particularly in respect of education, training and employment, and

(c) to examine and improve upon the existing programmes in response to the needs identified;

11. Realizes the fact that internally displaced persons fall outside the mandate of the office of United Nations High Commissioner for Refugees and are not assisted by that office;

12. Takes a serious note of the fact that the displacement of one group of people for the rehabilitation of another set of displaced people often results in inter-group conflicts;

13. Recommends:

(a) that a special commission be established to take steps to stop any such major development projects that may cause large-scale displacement of people against their consent;

(b) that rehabilitation should first be ensured, then only displacement should take place; and

(c) that rehabilitation should be worked out with the help of local voluntary agencies together with the active and effective participation of the people to be displaced;

14. Notes that many of the communities, especially tribal, being displaced by development projects, are land-based for their existence and, in several cases, have no other skills by which they can seek their livelihood;

15. Recommends that access to skills and education and thereby to non-land-based occupations of the vulnerable communities must be increased, in addition to land compensation for displaced communities (New Delhi, Final Act, part VIII).

Note

1/ The Declaration of minimum humanitarian standards was published in 1991 by the Institute for Human Rights at the Aabo Akademi University, Finland. See also Theodor Meron and Allan Rosas, "A Declaration of Minimum Humanitarian Standards", American Journal of International Law, vol. 85, No. 2, April 1991, pp. 375-381.